

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



Click here to go to
original staff report

January 7, 2014

MEMORANDUM

TO: Commissioners and Interested Parties

FROM: John Ainsworth/South Coast Senior Deputy Director (Los Angeles County)

SUBJ: Addendum to Commission Meeting Wednesday, January 8, 2014 9:00 a.m.

<u>AGENDA</u>	<u>APPLICANT:</u>	<u>DESCRIPTION:</u>	<u>PAGE#</u>
<u>Revocation</u>			
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		Letter of Opposition	6-11

File Copy

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South Coast Region

December 23, 2013

DEC 23 2013

ORIGINAL VIA U.S. MAIL

VIA FACSIMILE (415) 904-5400

CALIFORNIA
COASTAL COMMISSION

Steve Kinsey, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

W 11a

Re: Darrach McCarthy and Lucia Singer
160 North Ocean Way, Pacific Palisades
CDP No.: 5-11-125
Commission Hearing Date: January 8, 2014
Opposition to Request for Revocation

Dear Chair Kinsey and Honorable Commissioners:

This law office represents Darrach McCarthy and Lucia Singer, owners of the above-addressed property. **As set forth below, there is no legal or factual basis to support revocation of our clients' permit, and we urge you to follow Staff's recommendation to deny the Request for Revocation.**

As detailed in the Staff Report, the opponents request entirely fails to meet the requirements for revocation as stated in Title 14 of the California Code of Regulations, § 13105.

Section 13105 provides that:

"Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;

Steve Kinsey, Chair
December 23, 2013
Page 2

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.”

Here, the opponents claim that our clients intentionally misrepresented the height of the project when they voluntarily had story poles erected on their property by an independent story pole contractor prior to the Commission’s approval of the Coastal Development Permit. However, there is absolutely no evidence that our clients intentionally mislead the Commission in any way. The time line provided in our letter to Deputy Director Ainsworth dated November 14, 2013, a copy of which is attached as Exhibit 4 to the Staff Report, establishes that our clients have been completely forthcoming and cooperative with regard to matters relating to the project, and specifically, the story poles.

As Staff agrees, there was no intentional inaccuracy, and no information that the opponents or Commission did not have at the time of the Commission action. This is simply the same opponents asking for another bite at the apple. There is no evidence whatsoever that our clients or our clients’ experts, working closely with the Commission staff, intentionally misled the Commission as is required by § 13105 (a) as a prerequisite to a grant of revocation.

Please note that Mr. Suisman’s own September 6, 2011 exhibit (Exhibit “E” to our letter to Mr. Ainsworth dated November 14, 2013 - Exhibit 4 to the Staff Report), prepared after the story poles were in place, prove that he did in fact have full information at that time to allow him to claim that he would suffer significant private view blockage as a result of the project. In fact, Mr. Suisman’s September 2011 depiction greatly exaggerated the true impact of the project. The project opponents clearly had sufficient information and the opportunity to fully participate in the original 2011-2012 permit proceedings.

Even the project opponents’ arguments relating to the Baseline Hillside Ordinance (“BHO”) were fully considered by the Commission at the public hearing on this matter. The Commission should know that the project opponents have also attempted to have the City of Los Angeles revoke our clients’ building permits based upon the project’s inconsistency with the BHO. Enclosed please find a copy of a letter from Ken Gill, Assistant Chief of the Engineering Bureau of the Los Angeles Department of Building and Safety, dated December 6, 2013, that states that the project had vested prior to the effective date of the BHO, and the requirements of the BHO therefore do not apply.

Steve Kinsey, Chair
December 23, 2013
Page 3

The opponents don't want our clients' house to be completed, don't want their private views blocked, and have used every administrative procedure available to delay and add expense to this project. The Commission's approval of the permit was thoroughly supported by expert and staff analysis. The Commission must not let the revocation process be abused simply because the opponents were not satisfied with the previous result.

We respectfully request that you deny the request for revocation as recommended by Commission staff. Thank you for your consideration. As always, please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY

By


FRED GAINES

cc: All Coastal Commission Members
Charles Lester, Executive Director (Via E-Mail)
Chuck Posner, Long Beach Office (Via E-Mail)
Andrew Willis, Long Beach Office (Via E-Mail)

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201 NORTH FIGUEROA STREET
LOS ANGELES, CA 90012

RAYMOND S. CHAN, C.E., S.E.
SUPERINTENDENT OF BUILDING
INTERIM GENERAL MANAGER

December 06, 2013

Councilmember Mike Bonin, 11th District
Attention: Debbie Dyer Harris
7166 W. Manchester Boulevard
Westchester, CA 90045

Subject: 160 N. Ocean Way, Santa Monica Canyon

Honorable Councilmember Bonin,

We have received your letter dated November 4, 2013 requesting information regarding the code requirements with respect to the applicability of the Baseline Hillside Ordinance (BHO) for the addition to a single family dwelling located at 160 N. Ocean Way. The Department carefully reviewed the approved plans and applicable code requirements for the project. The following is the chronology of plan submittals, permits issuance, and effective dates of code requirements, followed by the explanation of the applicable code requirements for the project:

- The applicant, Mr. Darrach McCarthy, submitted plans for the proposed addition to the existing single family dwelling and for the site grading on April 4, 2011 under Building Permit Application No. 11014-30000-01056 and 11030-30000-03212 respectively.
- When the plans were submitted, the addition was subject to the provisions of Los Angeles Municipal Code Section 12.21A17 (original Hillside Ordinance).
- During the plan check process, the Base Line Ordinance became effective on May 9, 2011.
- Subsequently, the applicant re-submitted revised plans that included the approval conditions of the Coastal Development Permit on July 3, 2012 for re-plan check.
- Afterwards, the Department of Building and Safety issued Building Permit Nos. 11014-30000-01056 and 11030-30000-03212 on September 9, 2012 that complied with the original Hillside Ordinance.

When a new ordinance becomes effective during the plan check process of a project, the vesting rights of the project is stated in Los Angeles municipal Code Section (LAMC) 12.26.A.3(b) which reads,

" Vesting of Development Plan. Whenever plans sufficient for a complete plan check are accepted by the Department of Building and Safety and a fee is paid, a vested right is granted to the project to proceed with its development in substantial compliance with the zoning, and development rules, regulations, ordinances and adopted policies of the City of Los Angeles in force on the date that the plan check fee is paid as indicated on a valid building permit application. These rights shall not include exemption from other applications or approvals that may be necessary to entitle the project to proceed (i.e., subdivision, zone variance, design review board review, etc.) and from subsequent changes in the Building and Safety and Fire regulations found necessary by the City Council to protect the public health and safety and which are applicable on a citywide basis, contained in Chapters V and IX of this Code and policies and standards relating to those chapters or from citywide programs enacted after the application is deemed complete to implement State or Federal mandates.

These rights shall end:

- (a) 18 months after the plan check fee is paid, or if a permit is issued during that time, when the building permit terminates pursuant to Section 98.0602;*
- (b) when subsequent changes are made to those plans that increase or decrease the height, floor area, or occupant load of the proposed structure by more than five percent;*
- (c) when the use of the property is changed;*
- (d) when changes exceed or violate the Zoning Code regulations in force on the date the plan check fee was paid; or*
- (e) when the discretionary land use approval for the project terminates under the provisions of Chapter 1 of this Code or any ordinance adopted pursuant to Chapter 1 of this Code."*

For the subject single family dwelling addition, the plans were submitted on April 4, 2011, and the resubmitted plans of July 3, 2012, did not change the floor area or the height of the building more by than 5% of the original floor area or height. In addition, the Building Permit was issued within 18 months of the plan submittal date. Therefore, pursuant to LAMC Section 12.26.A.3 (b), the project was allowed to maintain its vested rights and was not subject to the Baseline Hillside Ordinance since the building permit was obtained within 18 months of the original submittal date of April 4, 2011.

If you have any questions, please call Ara Sargsyan, Office Manager of West Los Angeles Office at 310-575-8122.

Sincerely,



KEN GILL

Assistant chief, Engineering Bureau

W11a
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JAN 3 2014

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CALIFORNIA
COASTAL COMMISSION

AGENDA ITEM W11a
5-11-125-REV; 160 N. OCEAN WAY, CITY OF LOS ANGELES
SANTA MONICA CANYON CIVIC ASSN. ET AL.:
FOR REVOCATION OF CDP NO. 5-11-125

January 3, 2014

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Honorable Chair and Members of the California Coastal Commission:

We offer these comments on behalf of our clients Santa Monica Canyon Civic Association and BOCA Neighborhood Association (Civic Associations) in response to the staff report for the above-captioned hearing item concerning our request for revocation of the coastal development permit (CDP) approved by the Commission for the single-family residential development currently under construction at 160 North Ocean Way in historic Santa Monica Canyon (project).¹

We note that neither staff nor the applicant's attorney, Mr. Fred Gaines, dispute that the story poles and flaglines erected by the applicant inaccurately reflected the height of the project. This leaves only two questions for the Commission to consider.

¹ To ensure timely distribution to the Commission of our materials, consistent with staff's public hearing notice instruction, we lodge this letter with the Commission's South Coast Area Office on Friday, January 3, 2014 (three working days before the January 8 hearing). Along with this letter, we also lodge two documents including graphic materials, prepared by Mr. Doug Suisman, entitled "Part 1-Background" and "Part 2-Grounds for Revocation."

First, was the misrepresentation intentional? Second, should the Commission find that accurate and complete information would have caused it to require additional or different conditions or deny the CDP? The answer to both question is clearly "yes," as shown in our revocation request (staff report, Exh. 3), and as further shown below.

Intentional Inclusion of Inaccurate and Erroneous Information.

Civic Associations respectfully disagree with staff's statement that they have not shown that the misrepresentation here was intentional. They have shown just that. (Staff report, Exh. 3 at 9; see *id.* at 5-7.) As this Commission knows, California Code of Regulations, title 24, section 13105 (Regulation 13105) only requires a general intent to provide inaccurate or erroneous information to the Commission, not any specific or malicious intent to harm the public. This is so because Regulation 13105 does not criminalize the conduct it forbids and implements an environmental public welfare statute (the Coastal Act) that is regulatory in nature. (See generally *People v. Davis* (2005) 126 Cal.App.4th 1416, 1434-1436.)

Here, the applicant's own survey (on file with the Commission's South Coast District Office), which was completed on September 13, 2011, long before the hearing on the CDP, informed the applicant and his attorney that the story poles they represented as depicting a 33'-6" high building envelope (top of fourth-story deck parapet wall) in fact depicted a 28' high building envelope -- a building envelope a little more than 7' higher than the 20'-6" high two-story single-family residence demolished by the project, as Mr. Gaines emphatically and repeatedly told the Commission. We know this now because the engineering survey prepared following the Commission's February 8, 2012 approval decision shows the top elevation of the project to be **96'-3"** above sea level. The September 13, 2011 survey shows the top elevation of the story-poled project to be **91'-3"** above sea level. **That's a 17.86 % discrepancy.**²

² The fact that at the November 3, 2011 hearing, the applicant was represented by his attorney does not make the inclusion of inaccurate and erroneous information unintentional. If that was so, all project applicants who appear before the Commission through agents would have an easy way out of permit revocation, which would render the Commission's revocation procedures useless. In any event, the applicant has a legal duty to provide accurate project information. **The CDP application form expressly warns him to do so.** Also, by law, he is responsible for his agent's "willful omission to fulfill the obligations of the principal." (Civ. Code, § 2338; *Furla v. Jon Douglas Co.* (1998) 65 Cal.App.4th 1069, 1078 [principal responsible for agent's misrepresenting house as more than 1,000 square feet larger than it actually was]; see also *id.*, §§ 2330, 2332.)

Moreover, the record in this case reveals that the applicant was himself closely involved in the CDP application and review process. He appeared himself at the continued hearing on February 8, 2012. He failed to rectify the false information his attorney had provided the Commission. He and his attorney violated their public duty to refrain from inducing the Commission to approve a CDP based on inaccurate and misleading information.

It Is More than Reasonable to Infer that Accurate Information, at a Minimum, Would Have Caused the Commission to Add a Permit Condition Ensuring that the Project's Height Does not Exceed the Height the Applicant Represented to the Commission in the Slides of the Story Poles and Flaglines.

Preliminarily, we note that staff contends that at the Commission's November 3, 2011 hearing "two photographs" of the story poles and flaglines were shown to the Commission. (Staff report at 6; see *id.* at 2 [reference to Exh. 6 attached to staff report.]) **In fact, the Commission was shown five photographs of the story poles and flaglines.** The two photographs contained in Exhibit 6 to the staff report are two of three story pole slides that were shown by Mr. Gaines.³ Staff's own presentation included another two slides depicting the story poles and flaglines. Staff's second slide was a close-up of the first one. (Hearing video, minutes 1:05–2:16.)⁴

According to the current staff report, accurate story pole and flagline representations would have made no difference to the Commission's decision on February 8, 2012 because "the photographs of the story poles and flag lines submitted with the revocation request were not shown to the Commission at the public hearings on the matter [the source photos on Exhibit # 3 labeled as 'SHOWN TO THE COMMISSION (2011)']." (Staff report at 5.) The Civic Associations do not dispute that they did not show the source **photos** to the Commission. But as is clear from the caption of their exhibit (staff report, Exh. 3 at 14 [Civic Associations' Exh. 2]), and as is further clarified by the Suisman declaration (staff report, Exh. 3 at 20–22), the labeling 'SHOWN TO THE COMMISSION (2011)' on the source photos obviously refers to the **story poles and flaglines** shown to the Commission in 2011, as compared to the actual construction in 2013, labeled "ACTUAL

³ It was while projecting his first slide (see page 1 of Exh. 6 to staff report) when Mr. Gaines began to misrepresent the height of the project as extending no more than 7' above the top of the "highest point" of the roof of the now demolished 20'-6" high two-story single-family residence at the project site. (Hearing video, minute 14:32–14:46.) When showing his second story pole slide (see page 2 of Exh. 6 to staff report), Mr. Gaines made the false statement that "That's the only place that you can see the house, you can see that." (Hearing video, minute 16:18–20.)

⁴ A photo depicting the story poles was attached to the staff report for the November 2011 meeting (page 1 of **Exhibit 4** to the staff report prepared 10/19/2011). Notably, that staff report invites the Commission to rely on that same **Exhibit 4** (citing it) for a finding that the project as then proposed was consistent with Policy 30251, including the specific requirement that the project be visually compatible with the character of surrounding areas. As staff stated:

"Where the proposed residence is visible, the height and mass of the residence are consistent with the scale of the surrounding neighborhood (**Exhibit 4**)."

(10/19/2011 staff report at 8, emphasis added.)

CONSTRUCTION (2013)." (*Id.*) The accuracy of our depictions of the story poles and flaglines in what is a comparative story pole/flagline analysis, dependent on what was built in 2013, is undisputed. That is what matters as does the fact that the same inaccurate story poles and flaglines (not the same photos thereof) were shown to the Commission before it found the project consistent with Policy 30251; and that the inaccurate story poles and flaglines were erected by or on behalf of the applicant for staff and the Commission to see and visualize the building envelope. As staff confirms, mass and scale of the project was pivotal to the Commission's decision. (Staff report at 4.) This alone negates the conclusion that accurate story pole information would not have made any difference in the Commission's decision. Project height is a key determinant of volumetric mass and scale.

In the end, only the members of this Commission can make the necessary finding regarding whether accurate and complete information would have caused the Commission to require additional or different conditions, or to deny the CDP altogether (as the Commission almost did on November 3, 2011). To that point, we believe **it is inconceivable that had the Commission known that the applicant would later renege on his promise that he will build the project at the maximum height shown by the story poles and flaglines, the Commission would not have added a special condition spelling out that the height as built must conform to height as depicted by the story poles and flaglines. To suggest otherwise is to suggest that the Commission would have allowed the applicant to deliver a project substantially higher than the project he claimed he would deliver. This not only defies common sense; it compromises the integrity of the Commission's CDP review process. The applicant cannot fairly or reasonably claim that after he showed the Commission a substantially lower building envelope than that he built, the Commission should look the other way and ignore revocation standards specifically adopted to rectify project misrepresentations that are germane to fair and honest enforcement of the Chapter 3 policies.**

Staff's additional reasoning that the photographs of the story poles and flaglines the Commissioners were shown on November 3, 2011 were not the subject of any Commissioner's comments begs the question. The question is, had the Commission known then (in November 2011 and in February 2012) what it knows now -- i.e., that the applicant had no intention to build his project in conformance with the building envelope delineated by his story poles and flaglines -- wouldn't the Commission have added a special condition spelling out that height as built must conform to height as depicted by the story poles and flaglines? At least six Commissioners' comments on November 3, 2011 (noted in our request for revocation) make clear that building mass and scale greatly mattered to the Commission. Again, a building's height directly affects its mass and scale.

Finally, the fact that on November 3, 2011, not one Commissioner could find the project consistent with the character of the surrounding neighborhood, even at the height shown by the story poles (staff report at 6), does not help the applicant. If anything, this proves that

the 28-foot high building envelope shown by the story poles and flag lines was not enough to compensate for the box-like architectural style of the project as then designed. When the Commission approved the revised project on February 8, 2012, it did so because of a substantial change in architectural style, combined with a minimal 6" (0.5') reduction in building height. (Staff report at 6 [1st full par.].) At the same time, as is evidenced by the video recording of the Commission's February 8, 2012 proceedings, at that time it was never told that after accounting for this small height reduction, the building that the applicant intended to construct was still 5' higher than the building envelope that was shown to the Commission on November 3, 2011.

Conclusion.

There can be no question that the story pole and flagline information presented to the Commission at a time it greatly matters -- live at the Commission's hearing -- was substantially inaccurate. The misrepresentation was intentional, as is made painfully clear by the applicant's own survey and his attorney's repeated false claims that the project is only 7' higher than the then existing house on the project site. The story poles and flaglines were erected at a maximum height of 28' (96'-3" minus 91'-3"), not 33'-6" (November 2011 project design), and not 33' (February 2012 project design).

Passing off the 28-foot high story pole design as reflecting the mass and scale of the 33-foot high building design substantially downplays mass and scale of the project as seen in 3-D form; and only 3-D visualization of a project in space, e.g., by story poles and flaglines -- not two-dimensional drawings showing plans alone, divorced from "the character of surrounding areas" (Policy 30251) -- allows the Commission to compare mass and scale of the project to mass and scale of the development in the surrounding areas. Such a comparison is pivotal to the Commission's findings under Policy 30251 that the proposed development is "sited and designed to protect views to and along the ocean and scenic coastal areas," and is "visually compatible with the character of surrounding areas...."

When a project applicant bamboozles the Commission, there must be consequences. That's where the Commission's revocation procedure comes in. Without consequences, project misrepresentations will go undeterred. When a public agency condones a false or misleading project description, the deceitful project applicant is the only winner. Everybody else loses. The Commission owes it to itself, the public *and* all CDP applicants who play by the rules to uphold and promote the highest standards of accuracy, integrity and professionalism in the CDP application and review process.

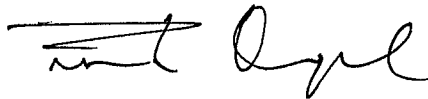
If "achievement of sound coastal conservation and development is dependent upon public understanding and support" (§ 30006), public understanding and support for the Commission's review process should not be undermined. What the applicant has done

Honorable Members of the
California Coastal Commission
January 3, 2014
Page 6 of 6

here is just that. Revocation rectifies the harm to the process and sound coastal conservation and development.

Civic Associations urge the Commission to grant their request for revocation.

ANGEL LAW

A handwritten signature in black ink, appearing to read "Frank P. Angel". The signature is fluid and cursive, with a horizontal line above the first part of the name.

Frank P. Angel

cc via personal delivery to South Coast Area Office (attn.: Charles R. Posner, Coastal Program Analyst)

Application for Revocation of Coastal Development Permit No. 5-11-125

Part 1 - Background

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CALIFORNIA
COASTAL COMMISSION

COASTAL DEVELOPMENT PERMIT APPLICANT:

Darrach McCarthy and Lucia Singer

PROJECT LOCATION:

160 North Ocean Way, Los Angeles County

PROJECT DESCRIPTION:

Demolition of existing single-family residence and construction of a new, 33' high, 4614 sq. ft. single family residence

LOCAL APPROVAL:

City of Los Angeles Approval in Concept No. ZA-2011-1039- AIC-MEL

ENTITIES APPLYING FOR REVOCATION:

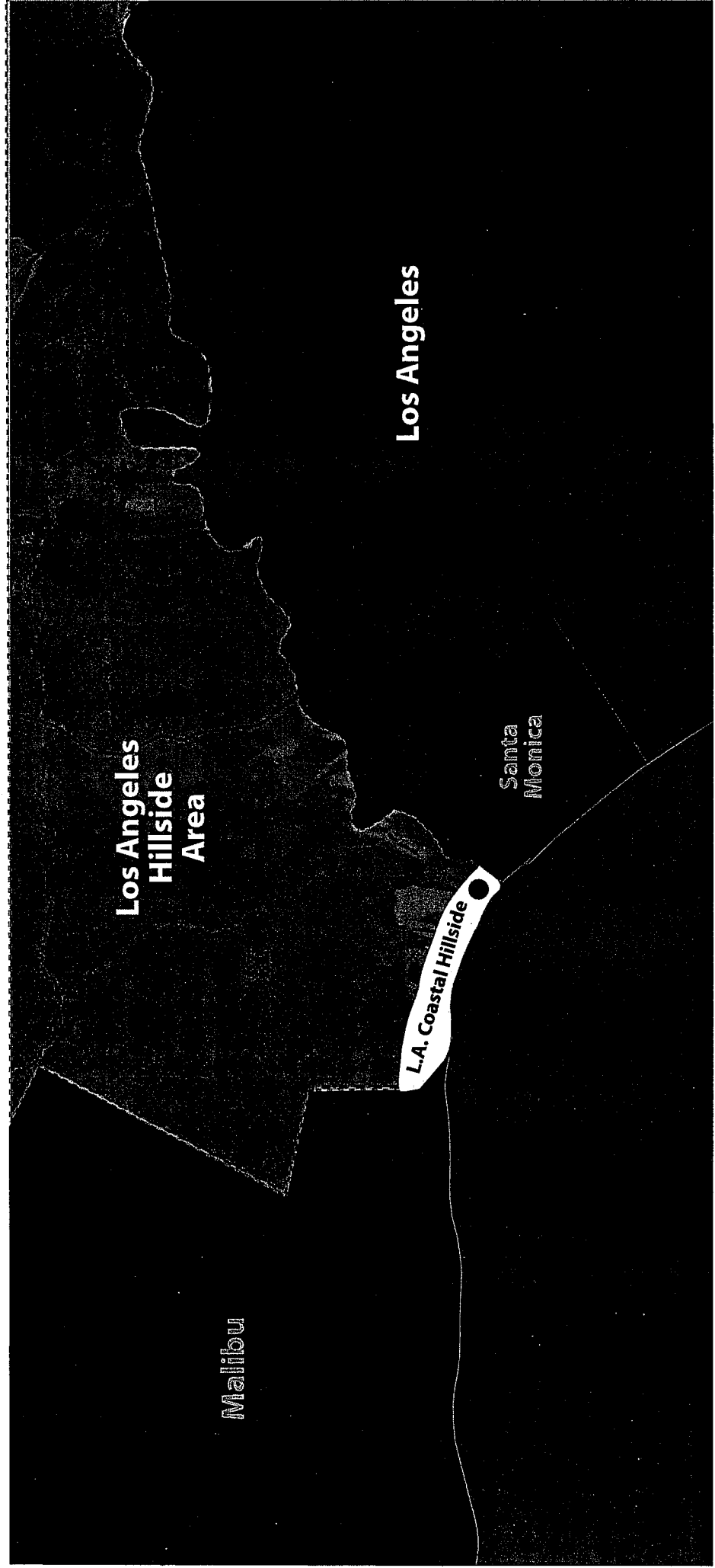
Santa Monica Canyon Civic Association and BOCA Neighborhood Association

Sensitive coastal setting - Proposed development is located in Santa Monica Canyon



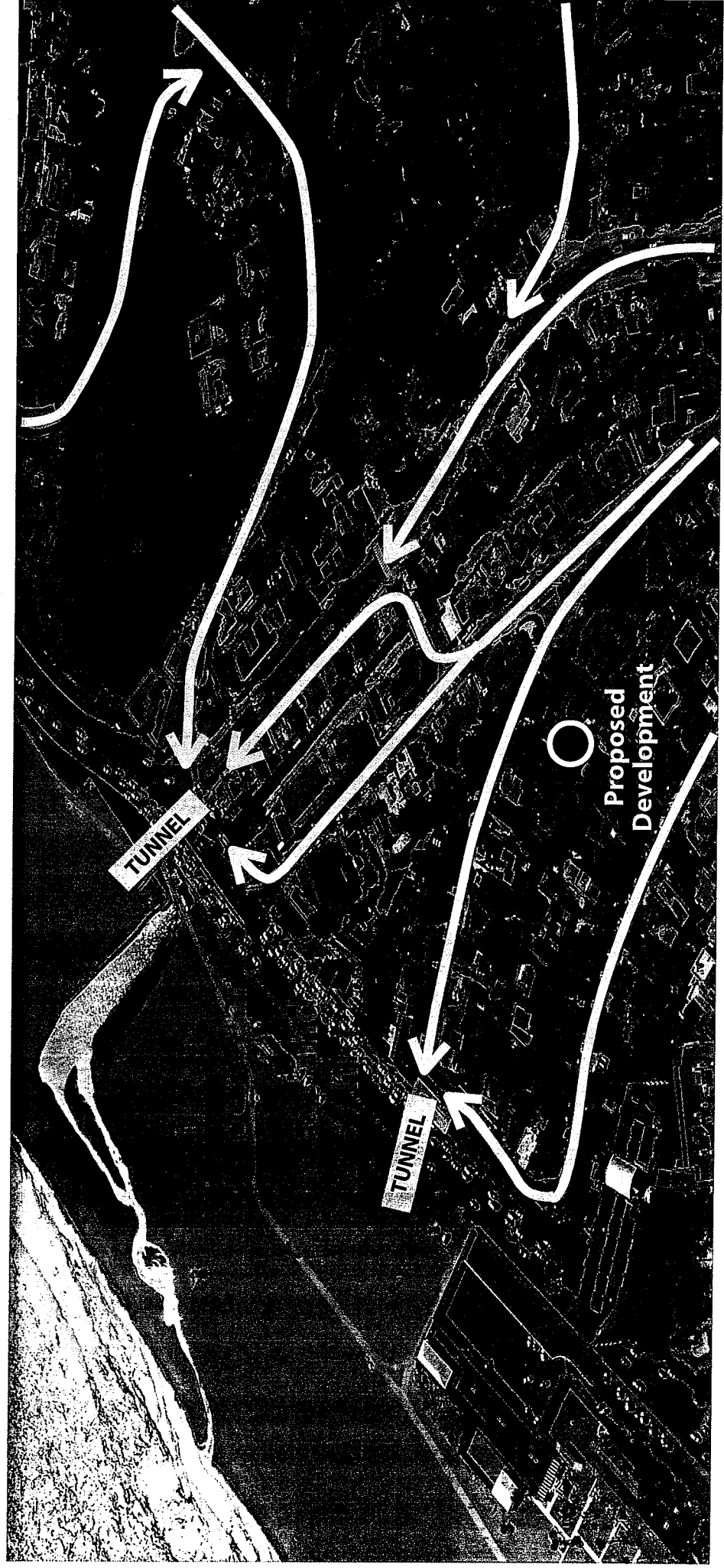
Dual jurisdiction - Santa Monica Canyon is the only coastal and hillside community within the city of Los Angeles

California Coastal Commission APPLICATION NUMBER: 5-11-125
PROJECT LOCATION: 160 North Ocean Way, Pacific Palisades, Los Angeles County



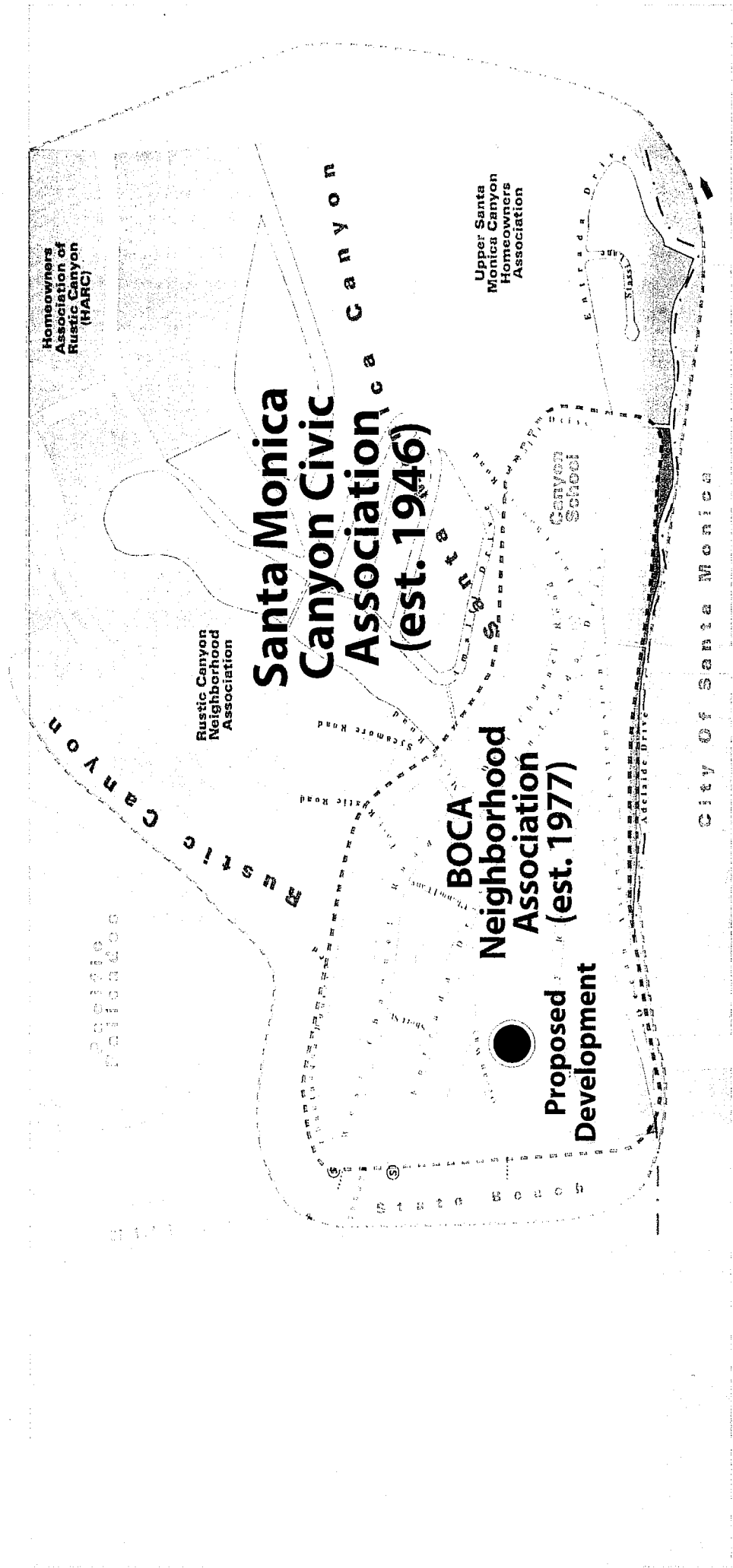
Coastal gateway - The Canyon is a major public access point and gateway to the coast - its community character is of broad public interest

California Coastal Commission APPLICATION NUMBER: 5-11-125
PROJECT LOCATION: 160 North Ocean Way, Pacific Palisades, Los Angeles County



Strong sense of community - Project lies within two active neighborhood associations representing 1200 households

SMCCA is oldest neighborhood association in Los Angeles, was a major proponent Coastal Act



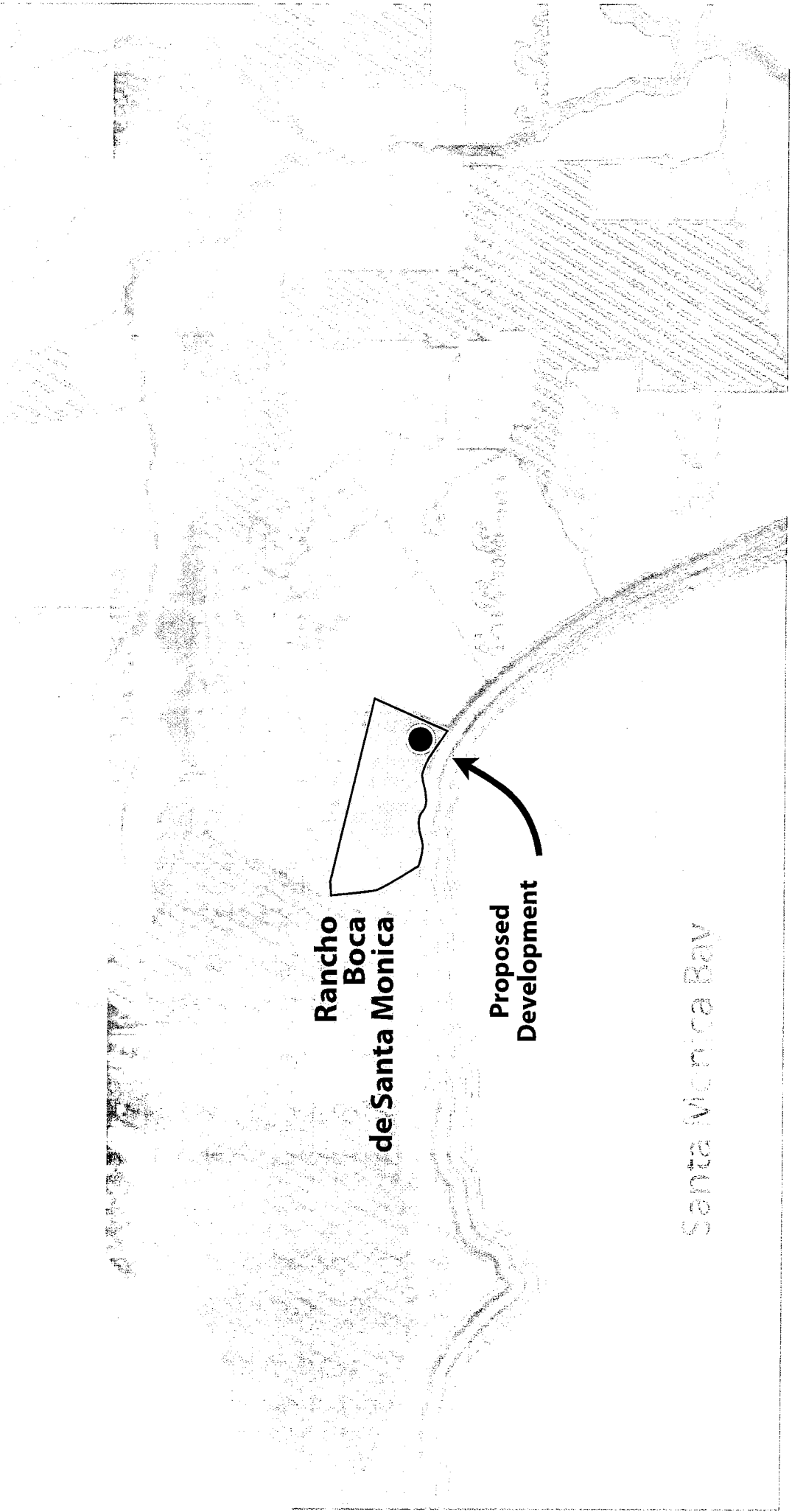
Historic coastal setting - Santa Monica Canyon is part of historic Rancho Boca de Santa Monica

California Coastal Commission APPR. MAPEN IN MARSHES 1-1-75
SHEPHERD COASTAL COMMISSION, 10 Ocean View, Pacific Palisades, CA 90272

Rancho
Boca
de Santa Monica

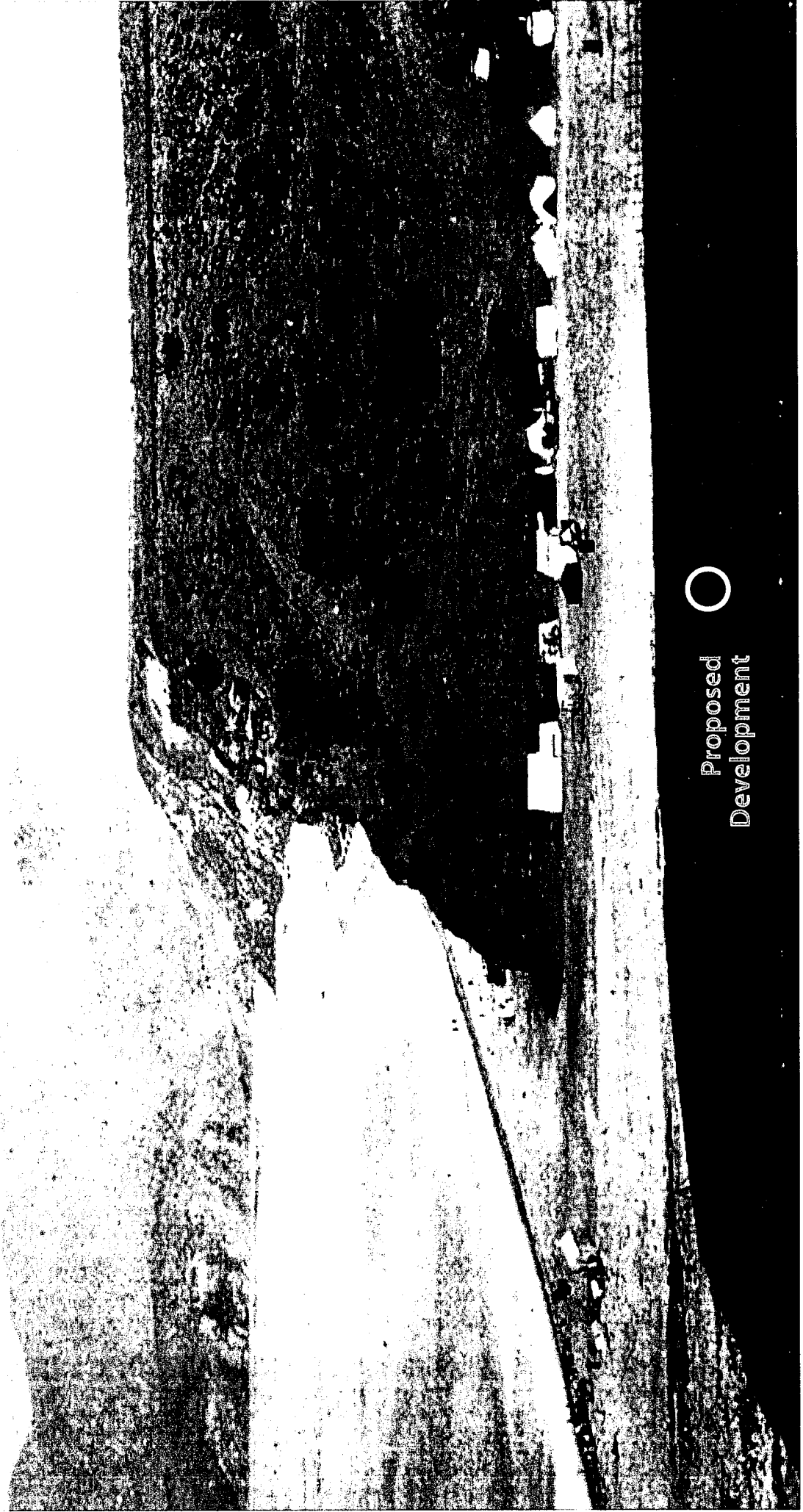
Proposed
Development

Santa Monica Bay



The Canyon was settled in the 1880s

c. 1880



Proposed
Development

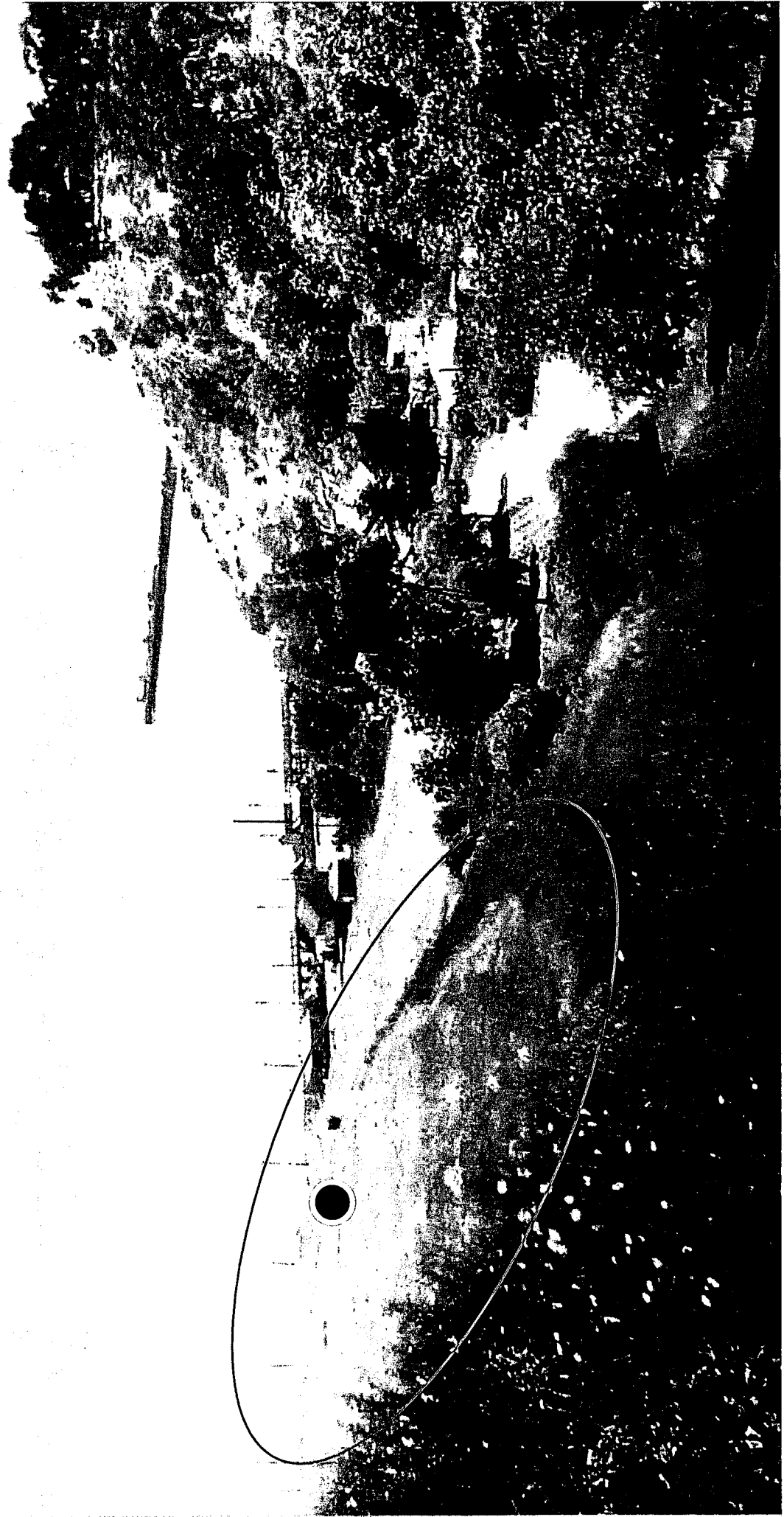
**The Canyon's slopes are
natural spring terraces**

c. 1880



**The proposed development is on the
south spring terrace at the Canyon's mouth**

c. 1900



**The proposed development is on the
south spring terrace at the Canyon's mouth**

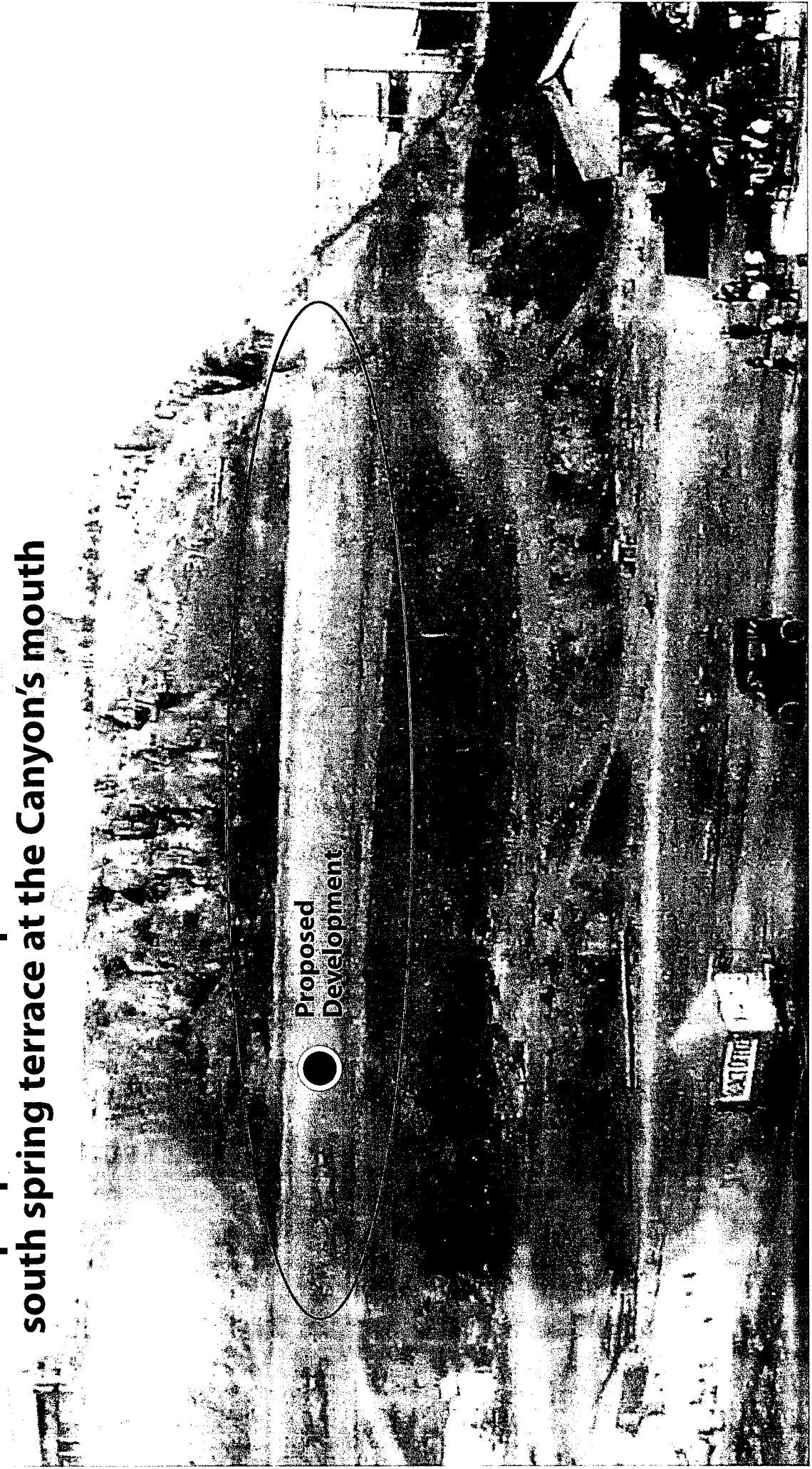
c. 1918



SANTA MONICA CANYON, SANTA MONICA, CALIFORNIA

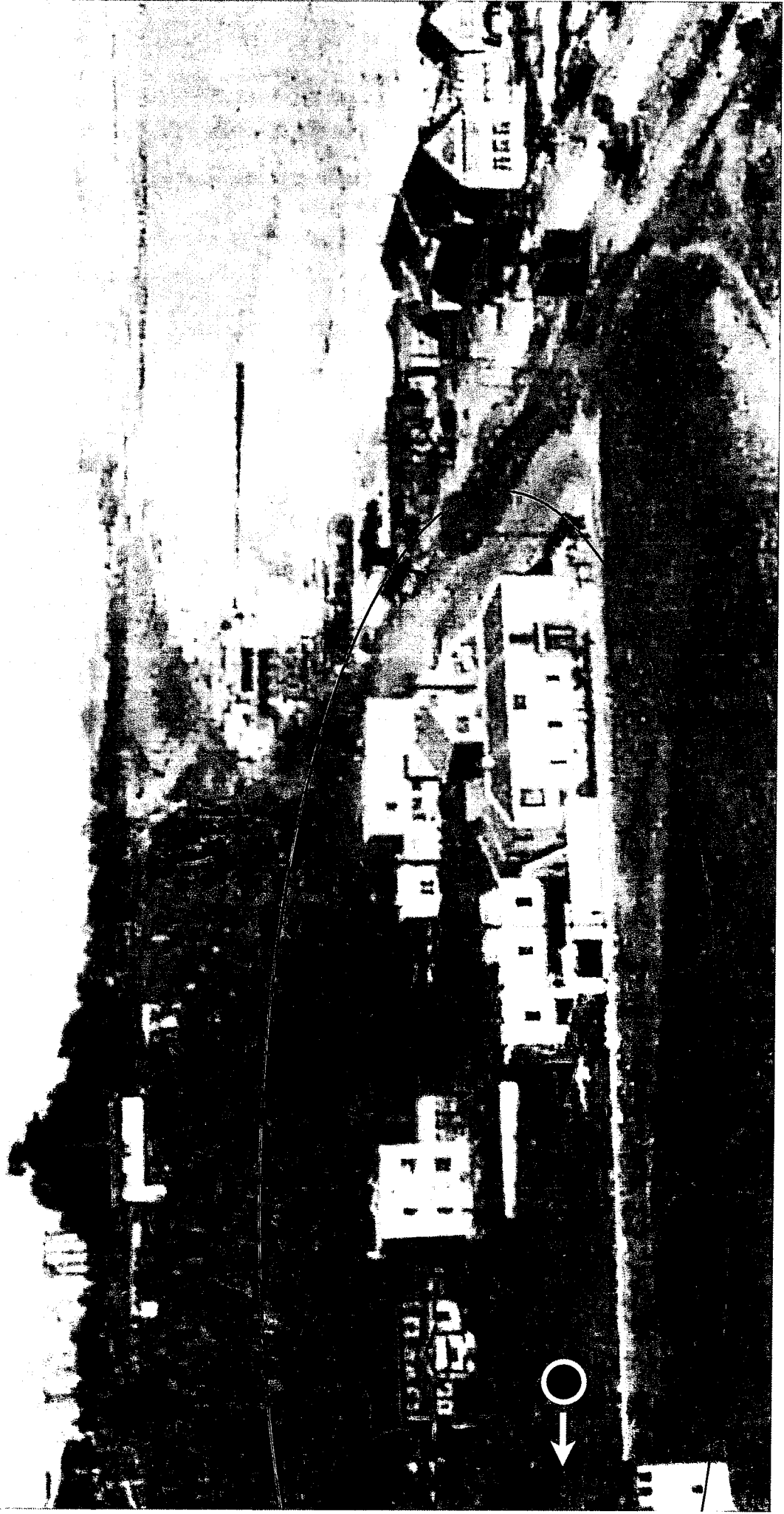
The proposed development is on the south spring terrace at the Canyon's mouth

C. 1900



**The historic houses are all 1 and 2 stories;
almost all the original homes still stand**

c. 1918



Beach

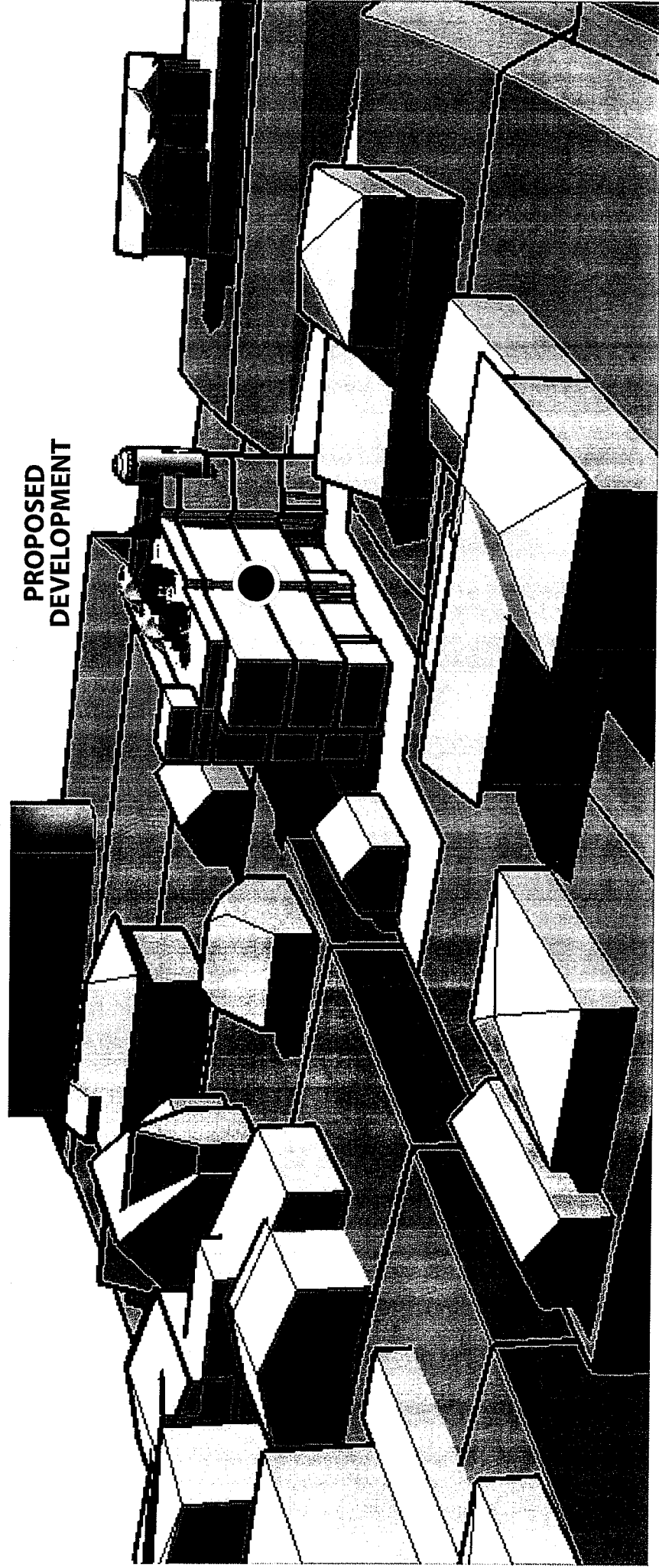
**The historic houses are all 1 and 2 stories;
almost all the original homes still stand**

**Proposed
Development**



November 2011
Commissioners reject 4-level house and roofdeck design
as too high and bulky to be compatible with
surrounding area; applicants ask for continuance

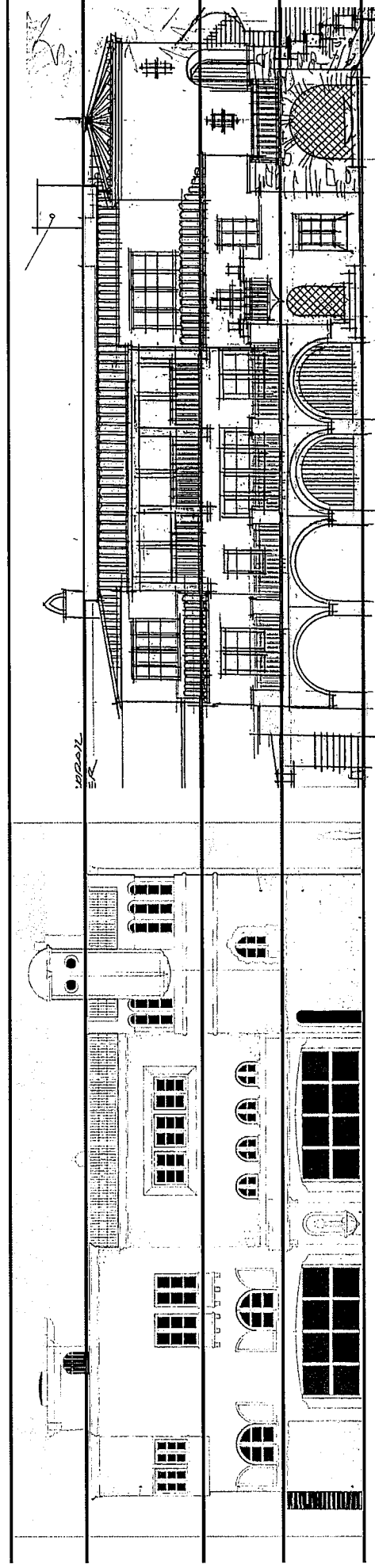
California Coastal Commission APPLICATION NUMBER: S-11-125
PROJECT LOCATION: 160 North Ocean Way, Pacific Palisades, Los Angeles County



December 2011
Applicants submit a
revised 4-level design that
is nearly as high and bulky
as the rejected first design

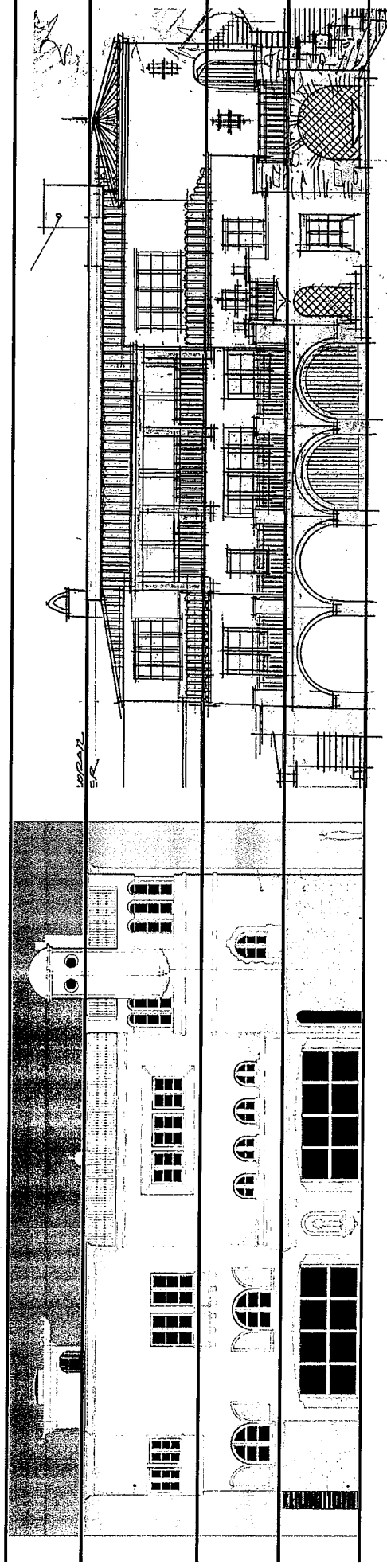
January 2012
Staff report finds new design
incompatible with neighborhood:

"...the proposed residence exceeds current height standards established by the City in the BHO, and is larger than many of its neighbors on a lot that is more constrained than many of its neighbors. The structure as proposed would therefore not be consistent with the character of the surrounding area..."

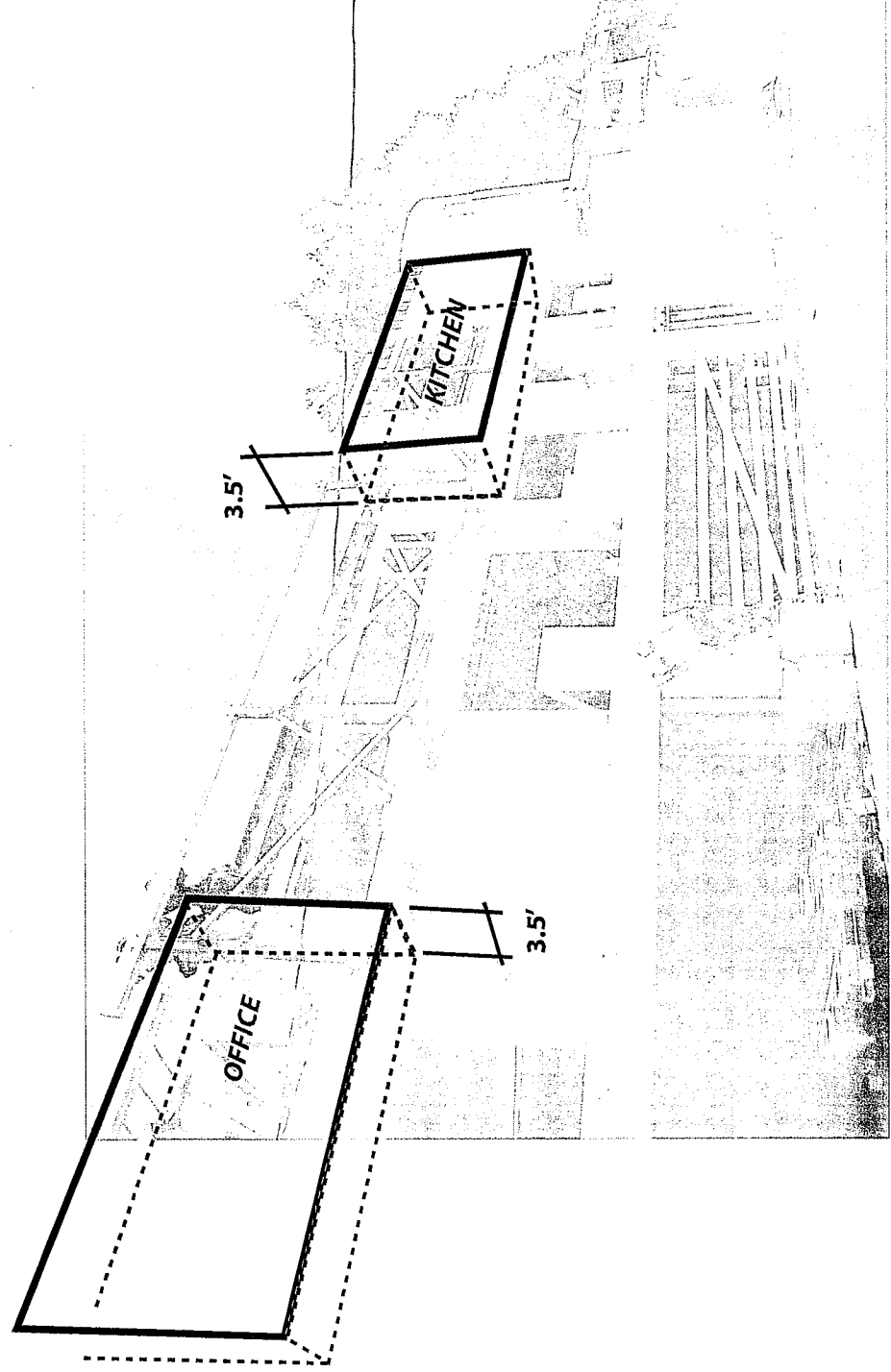


**February 2012
Community agrees with staff, and asks for
height lowered to BHO standard.**

**But at continued hearing, Commissioners
approve new design, and community
accepts without further opposition.**

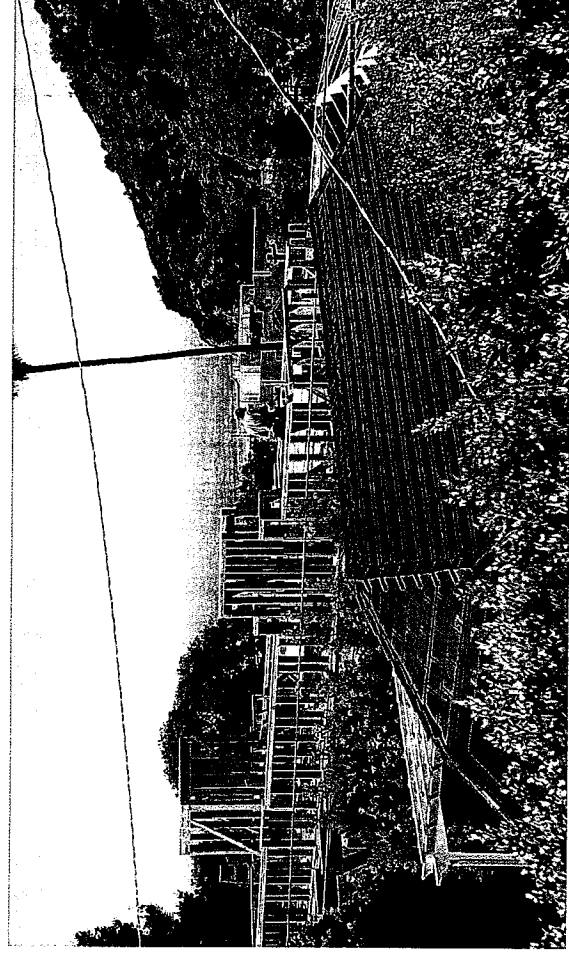
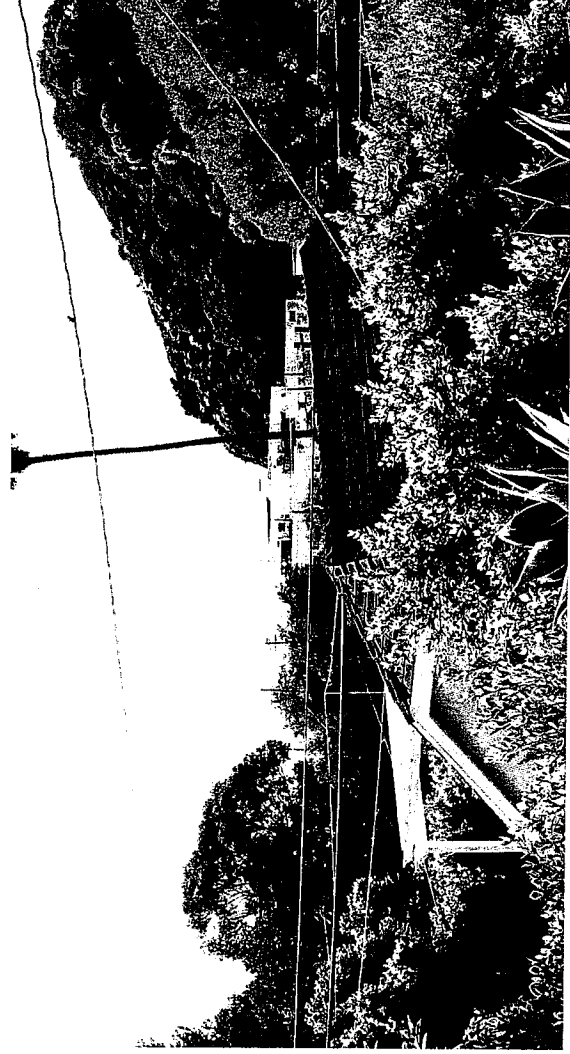


October 2013
During construction, community discovers violations of
approved set-backs; Comissioners ask for investigation;
Coastal inspector confirms violations and requires corrections



November 2013 - Community confirms serious height violation: constructed building is 5' higher than the story poles shown to the Commission and community

- **Unprecedented community opposition**
- **First time either organization has ever filed a revocation petition with the Commission**
- **First time both organizations have jointly sought corrections on a residential project**



JAN 3 2014

CALIFORNIA
COASTAL COMMISSION

Application for Revocation of Coastal Development Permit No. 5-11-125

Part 2 - Grounds for Revocation

COASTAL DEVELOPMENT PERMIT APPLICANT:

Darrach McCarthy and Lucia Singer

PROJECT LOCATION:

160 North Ocean Way, Los Angeles County

PROJECT DESCRIPTION:

Demolition of existing single-family residence and construction of a new, 33' high, 4614 sq. ft. single family residence

LOCAL APPROVAL:

City of Los Angeles Approval in Concept No. ZA-2011-1039- AIC-MEL

ENTITIES APPLYING FOR REVOCATION:

Santa Monica Canyon Civic Association and
BOCA Neighborhood Association

The central issue:

The house is 5' higher than applicants represented to Commission staff, Commissioners, and the community.

Can an applicant come before the Commission, mislead you on a critical issue, and get away with it?

COASTAL COMMISSION

OFFICE OF THE

ADMINISTRATIVE SERVICES
10000 CRENSHAW BLVD
SOUTH BAY, CA 90231

1. Is there a height discrepancy?

Yes. Neither staff nor applicant contest our factual assertion.

2. Does it matter?

Yes. Height was the critical factor in the hearing. Applicant used story poles to claim height would not impact public views. Community (and staff) argued that excessive height was incompatible with community character.

3. Was there deception?

Yes. Story poles underrepresented the height of the building by 5', part of a pattern of deception by applicants to get what they wanted

4. What is the appropriate action?

1. Revoke the permit, and 2. condition a new approval on a reduction in height, either by lowering the roof 5', or, as a compromise, by removing the parapet wall, yielding a reduced height of 3.5'

**The story poles matter.
Applicants acknowledge
that the Coastal
Commission requested
them: "At the request of
Staff and neighbors, this
matter was delayed...to
allow story poles to be
erected and viewed."**

**- Fred Gaines, attorney for applicant,
in a letter to the Commission**

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South Coast Region

OCT 27 2011

October 27, 2011

ORIGINAL VIA U.S. MAIL

CALIFORNIA
COASTAL COMMISSION

VIA FACSIMILE (415) 904-5400

Mary Shallenberger, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Th 12c

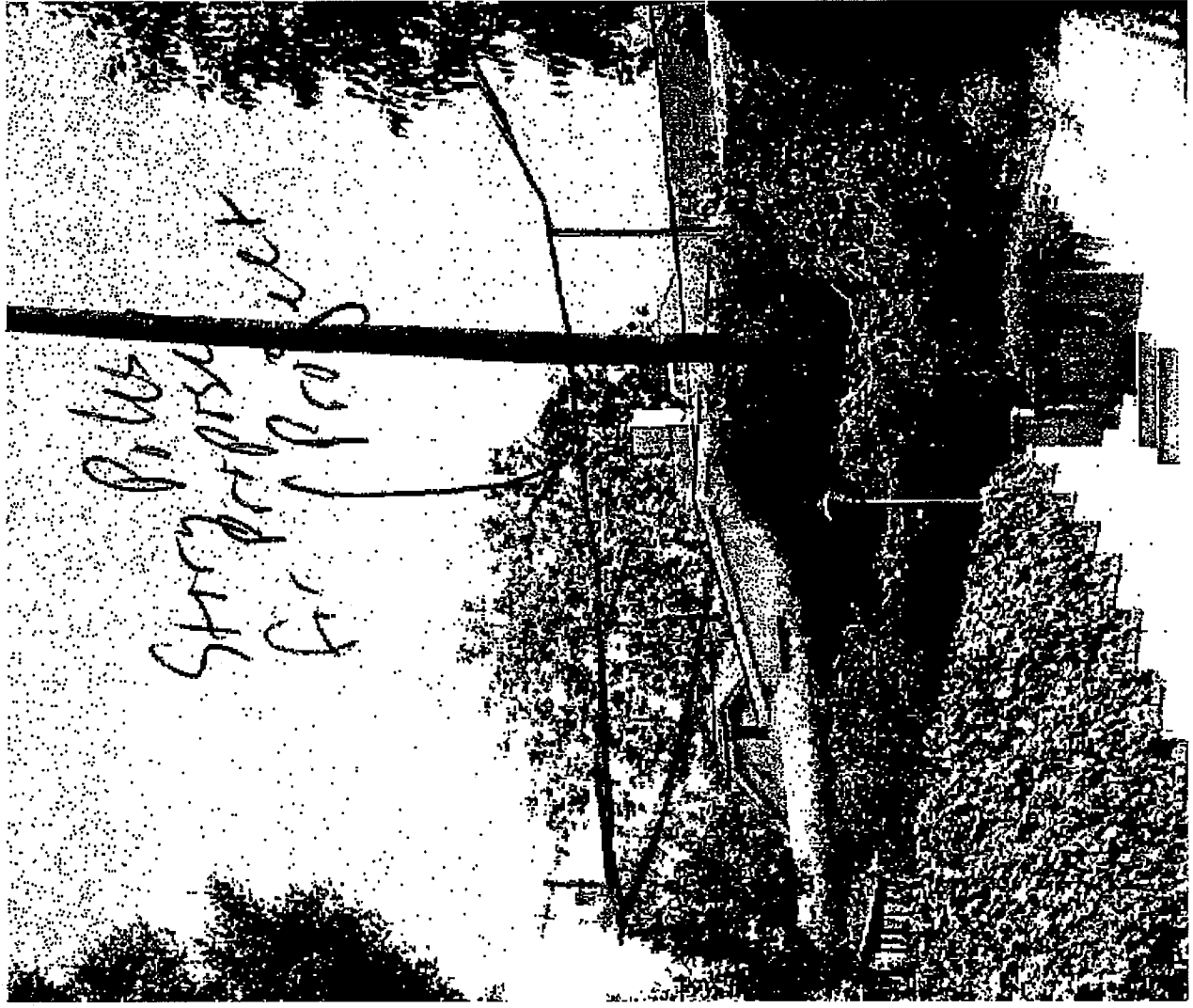
Re: 160 North Ocean Way, Pacific Palisades
Coastal Development Permit Amendment No. 5-11-125
Commission Hearing Date: November 3, 2011
Request for Approval Per Staff Recommendation

Dear Chair Shallenberger and Honorable Commissioners:

This law firm represents the applicants, Darrach McCarthy and Lucia Singer, in the above-referenced matter. We urge you to follow Staff's recommendation to approve the Coastal Development Permit with conditions as proposed. The proposed permit is for the applicant's own residence, which meets all applicable Los Angeles Municipal Code and Coastal Act requirements (no variances or exceptions sought). The applicants have agreed to accept all conditions as proposed by the Commission Staff.

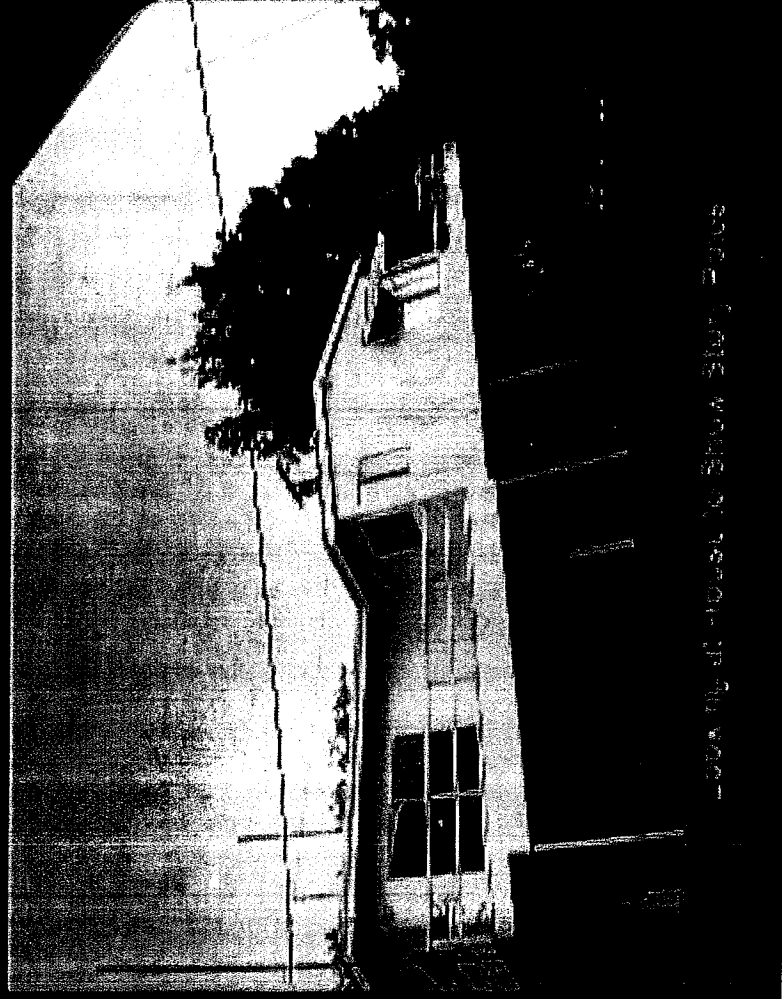
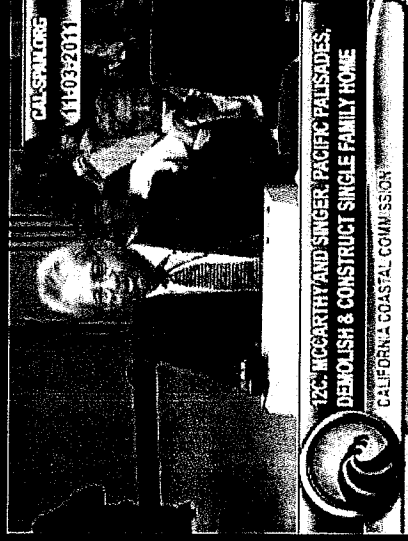
The project involves the remodel of an existing 1959 home on an interior flag lot, which is not visible from any public street. The new home will be seven feet taller than the highest point of the existing home. At the request of Staff and neighbors, this matter was delayed from the August meeting to allow story poles to be erected and viewed. As evidenced by the photographs provided in the Staff Report, the Commission Staff has correctly determined that no public views will be affected, and that private views are not protected under the visual protection policies of the Coastal Act.

**The story poles matter.
Applicants submitted
photos of them as exhibits
to the Commission**



The story poles matter.

Applicants used them to represent the height of new house: *"See the story poles that were erected at the roof's highest point? Seven feet (7') up is where the top of the roof of the new house would be."*



The story poles matter.

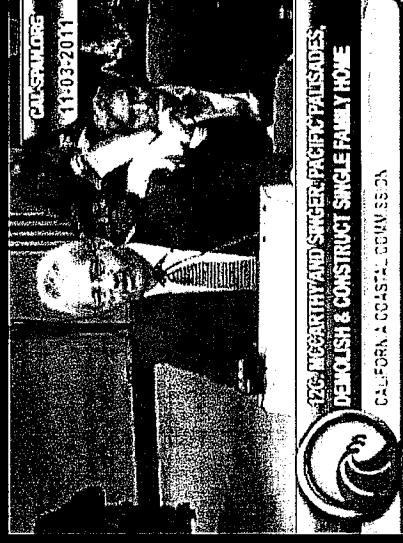
Applicants used them to represent height of new house: "Seven feet (7') taller than the existing house at the roofline..."

Existing house roofline:

84 feet above sea level

New house roofline:

84 + 7 = 91 feet above sea level



Single Family Home

- For Applicant's own use.
- 4,200 sq. ft. garage, 23.5' ht.
 - . 7 ft. taller than existing house
- Meets all L.A. City requirements.
 - . No variances
 - . No exceptions
- L.A. City plan check completed.

The story poles matter.

Applicants used them to represent height of new house: "Seven feet (7') taller than the existing house at the roofline..."

Existing house roofline:

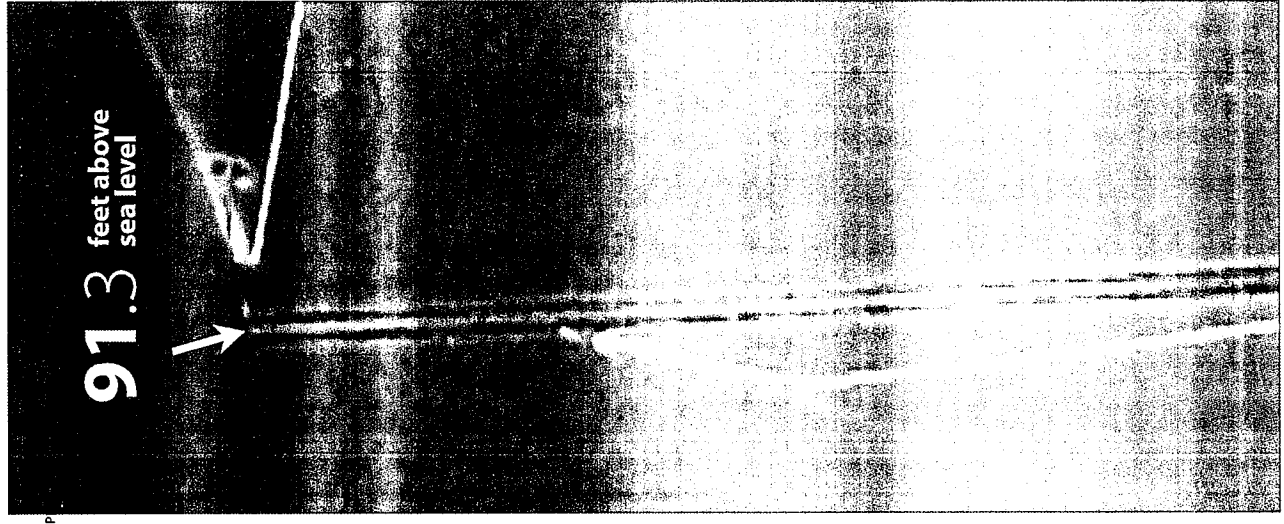
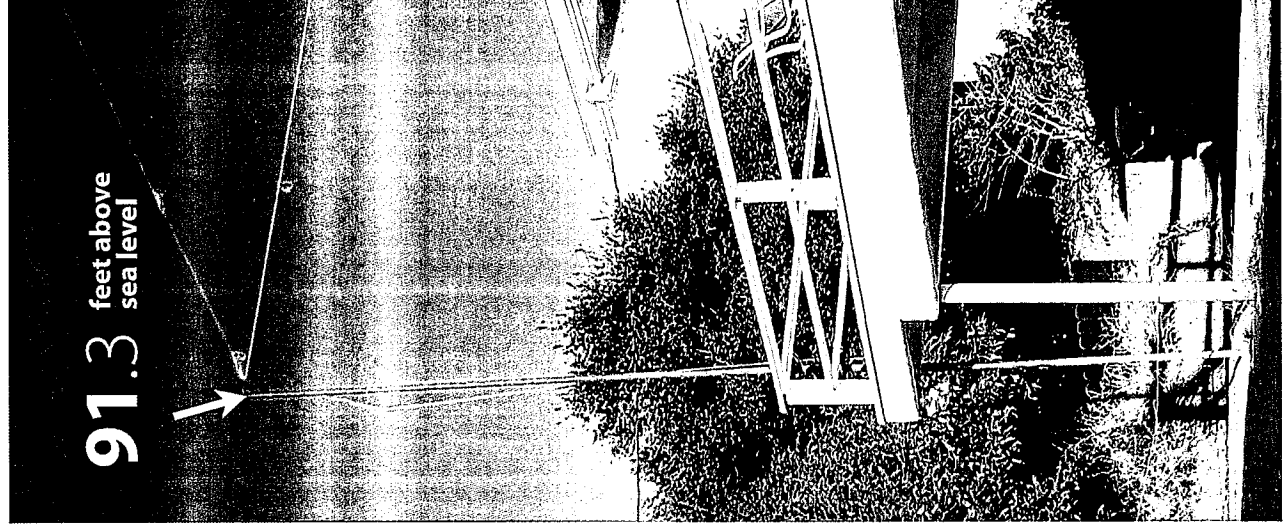
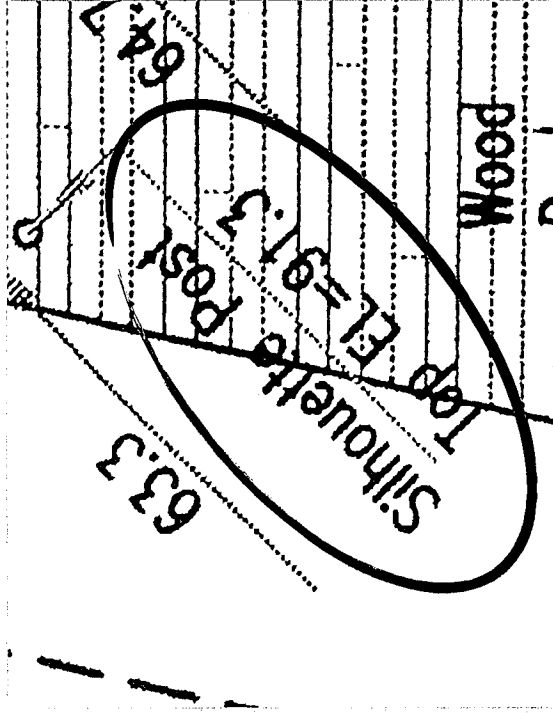
84

New house roofline:

84 + 7 = 91



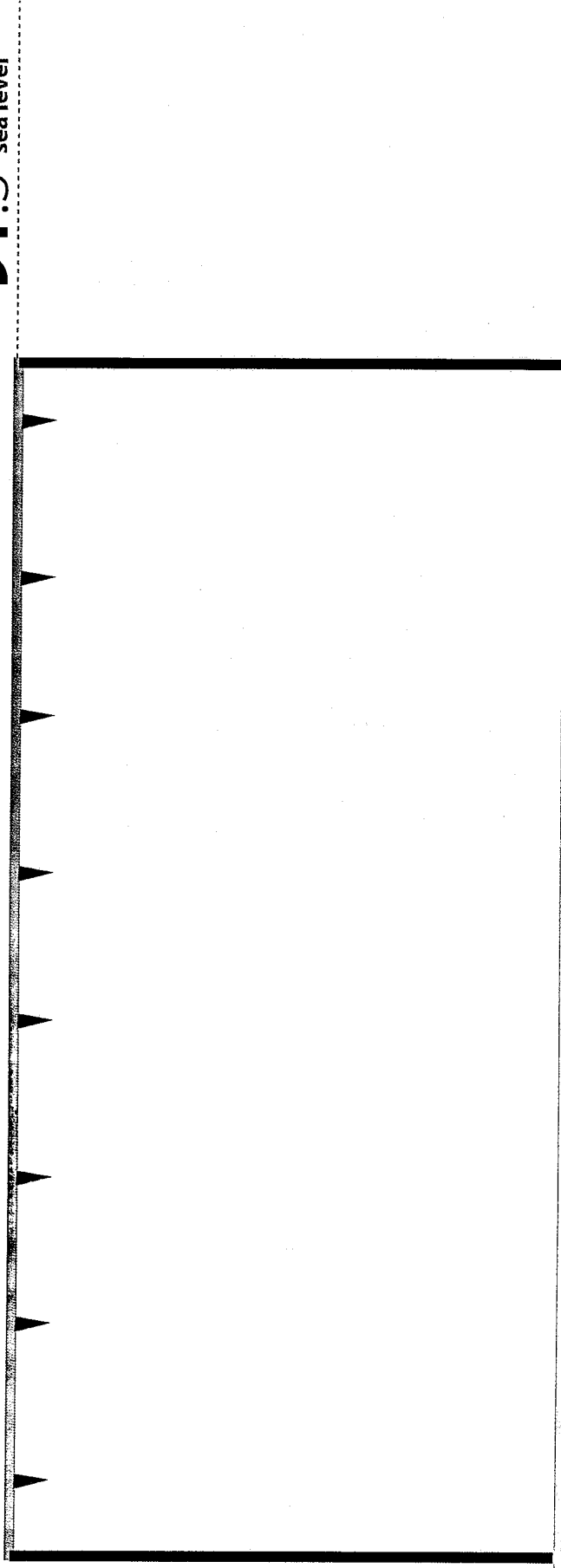
The story poles matter.
Applicants own survey
confirms them at 91.3 feet
above sea level.



The story poles matter.

**Community and Commission trusted that
the flagline represented the height honestly**

91.3 feet above
sea level



The story poles matter.

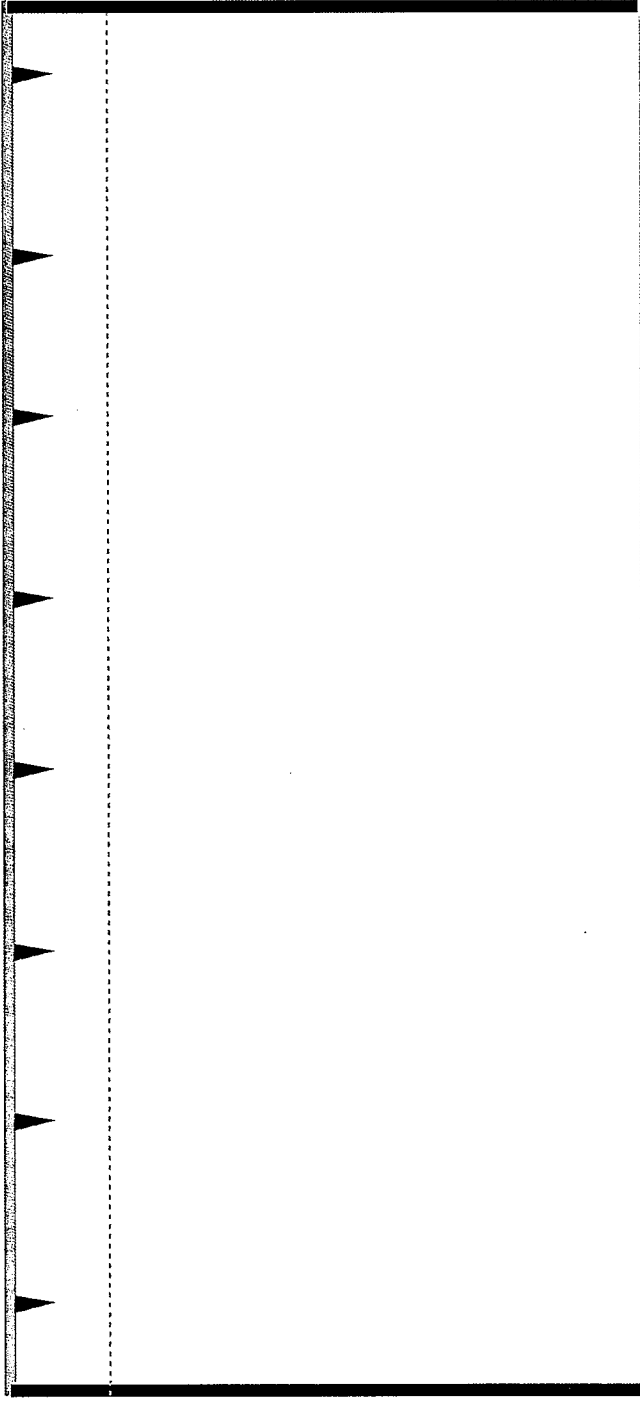
**Community and Commission
were repeatedly told they
represented roofline**

Suisman: "...I believe the yellow tape
[flagline] represents the handrail
height... Can you confirm?"

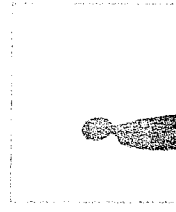
Applicants: "That is correct."

October 8 e-mail from applicant to community:

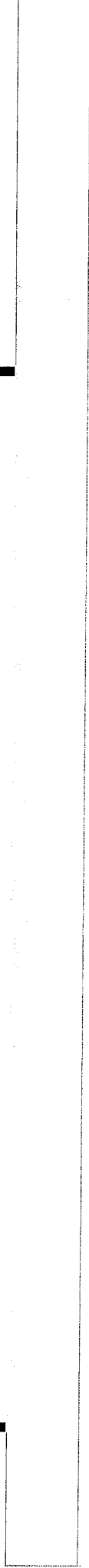
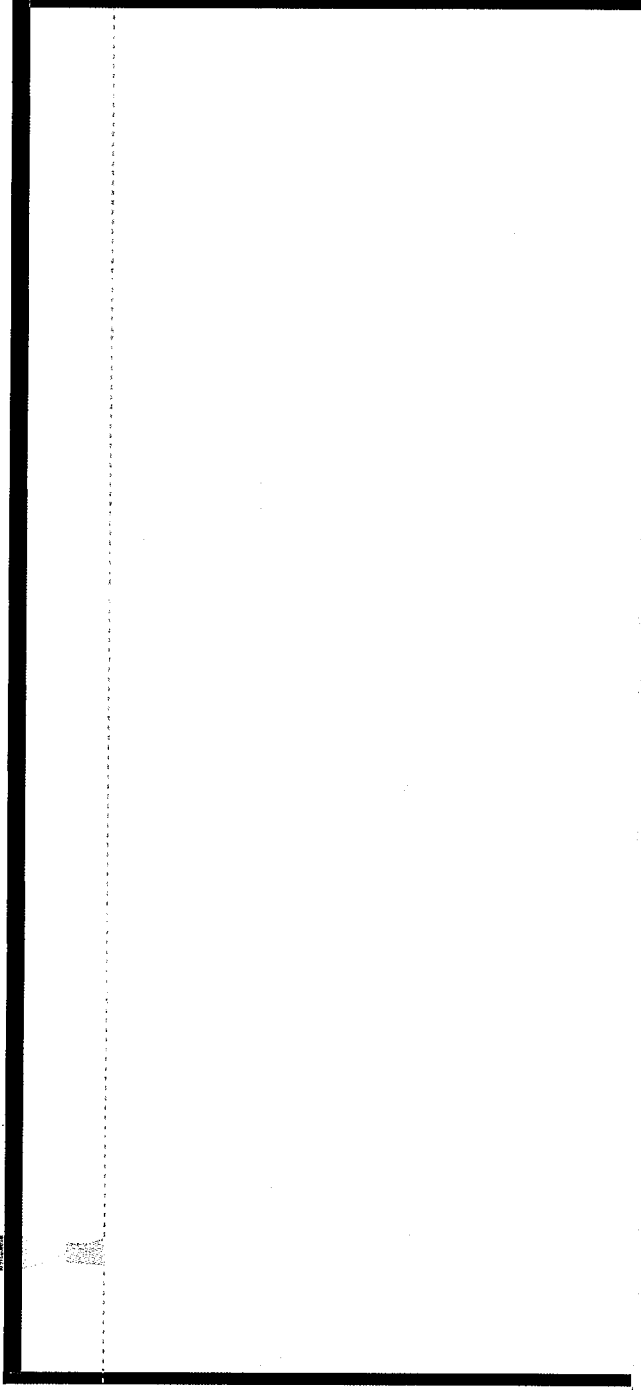
91.3 feet above
sea level



The story poles were false.



91.3 feet above
sea level



The story poles were false.



As the house frame rose in August,
something was clearly very wrong



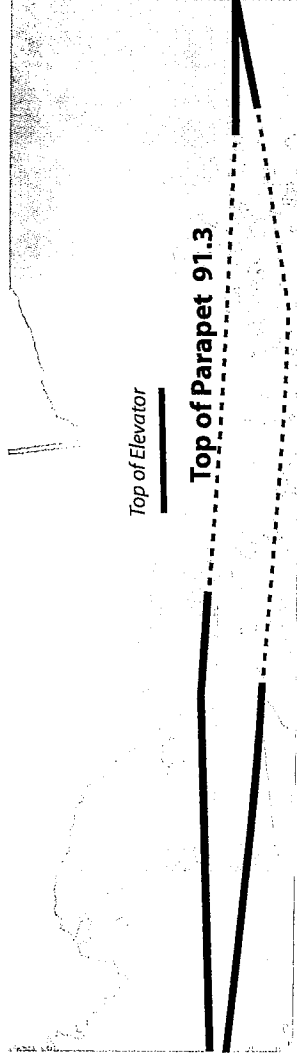
5' discrepancy

96.3 feet above
sea level

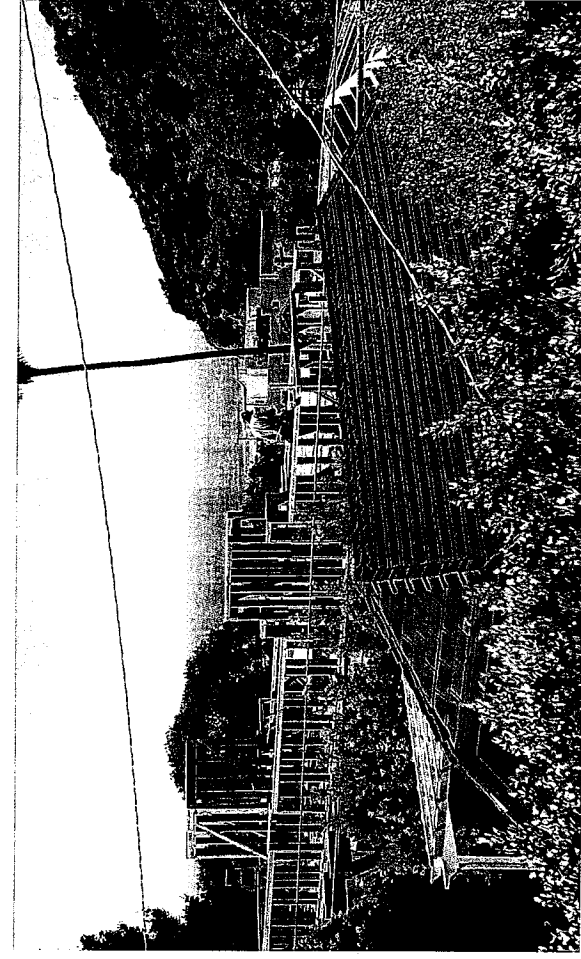
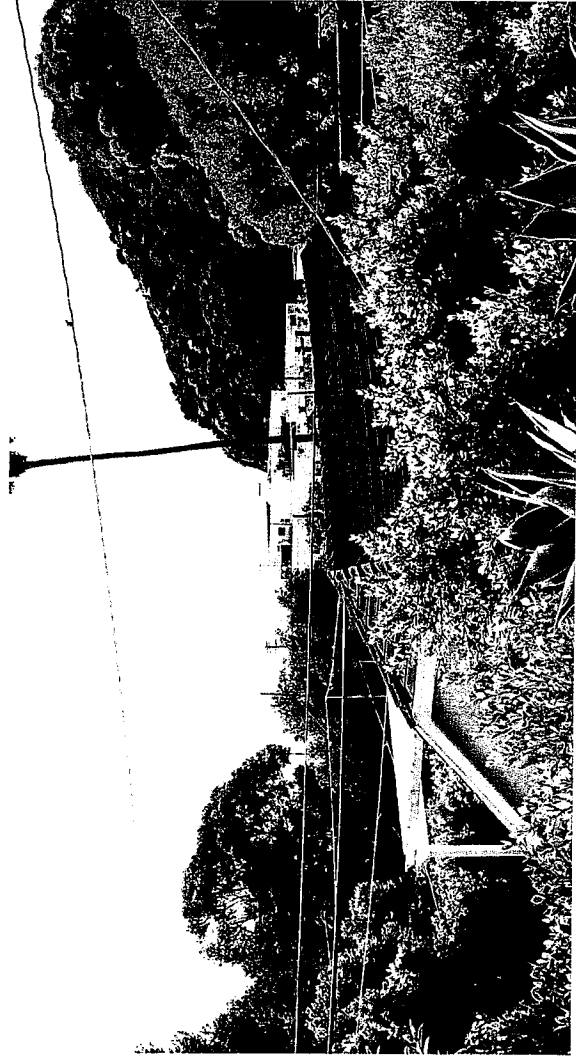
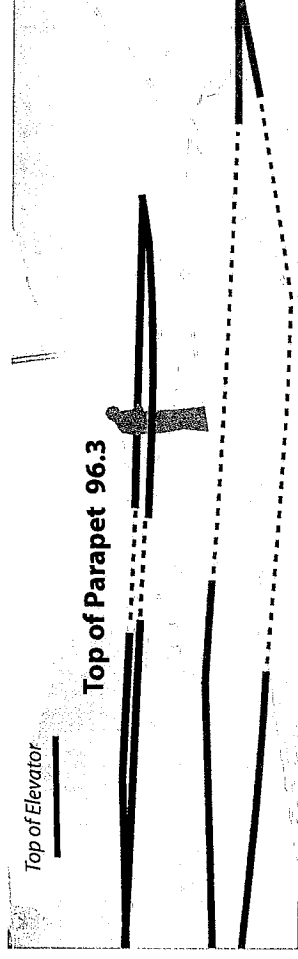
91.3 feet above
sea level

The story poles were false.

SHOWN TO THE COMMISSION (2011)

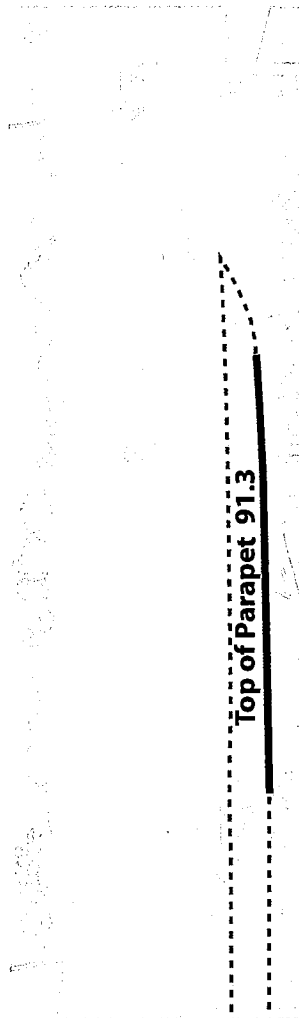


ACTUAL CONSTRUCTION (2013)

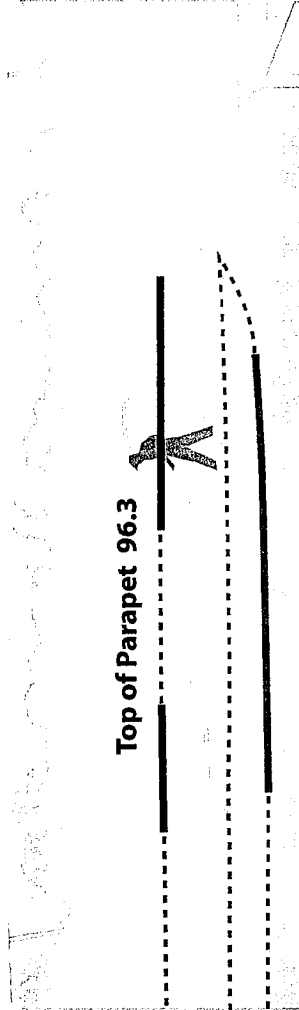


The story poles were false.

SHOWN TO THE COMMISSION (2011)

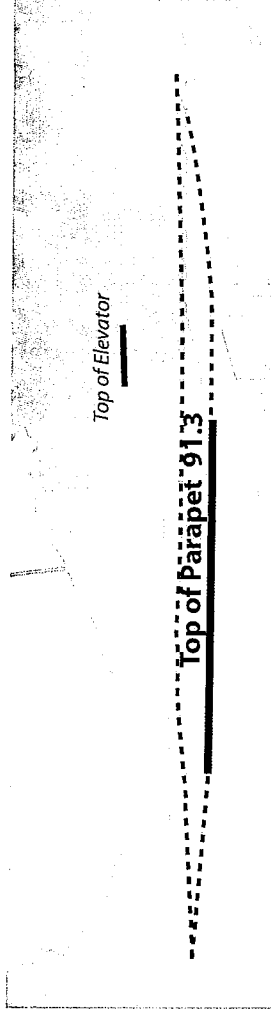


ACTUAL CONSTRUCTION (2013)

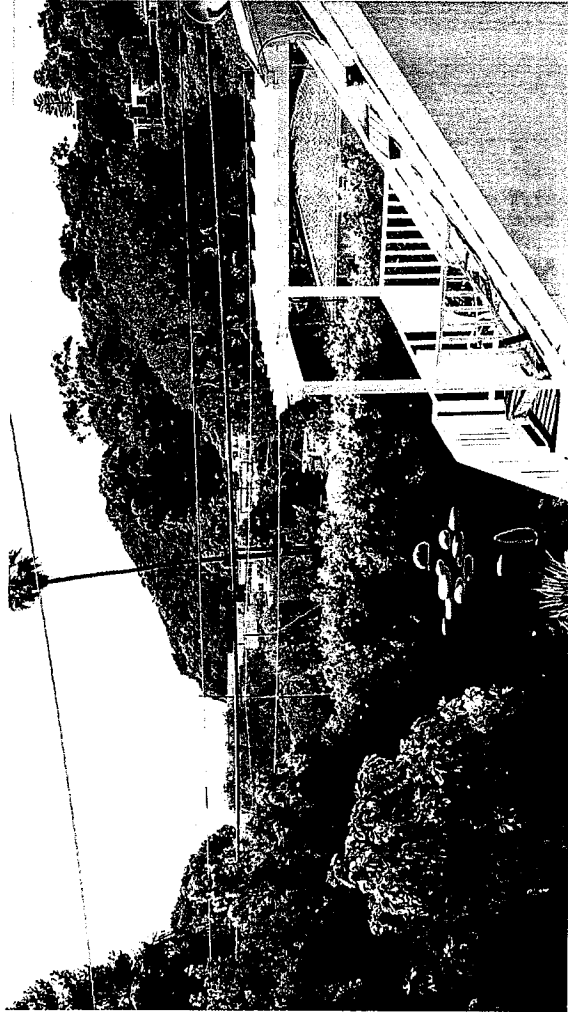
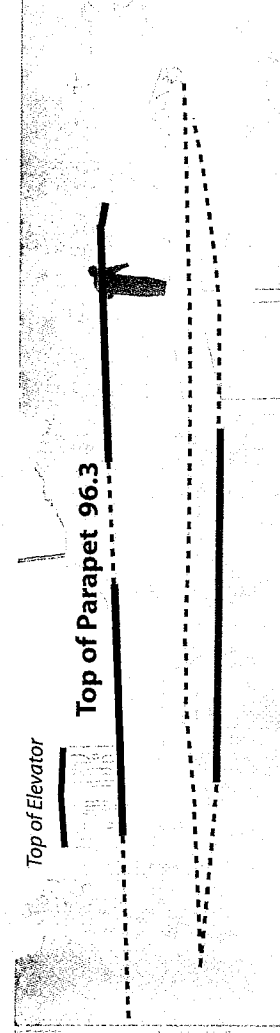


The story poles were false.

SHOWN TO THE COMMISSION (2011)



ACTUAL CONSTRUCTION (2013)



The story poles were false.

SHOWN TO THE COMMISSION (2011)

Top of Elevator

Top of Parapet 91.3

California Coastal Commission APPLICATION NUMBER: 5-11-125
PROJECT LOCATION: 160 North Ocean Way, Pacific Palisades, Los Angeles County

Top of Elevator

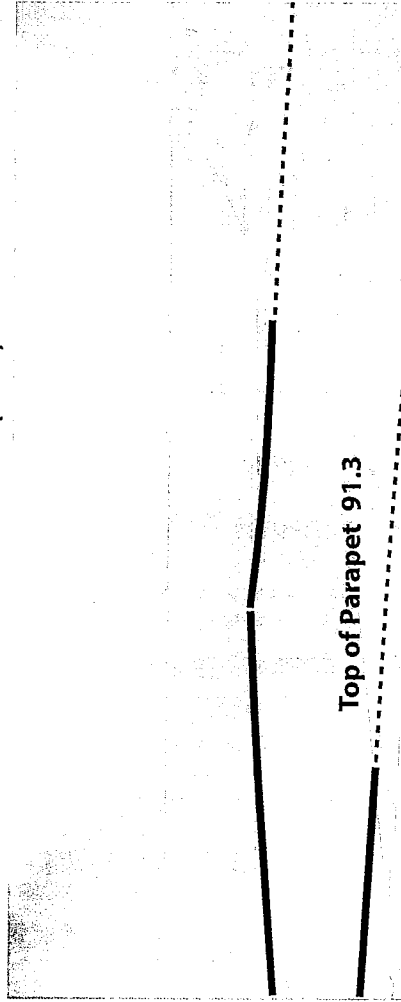
ACTUAL CONSTRUCTION (2013)

Top of Parapet 96.3

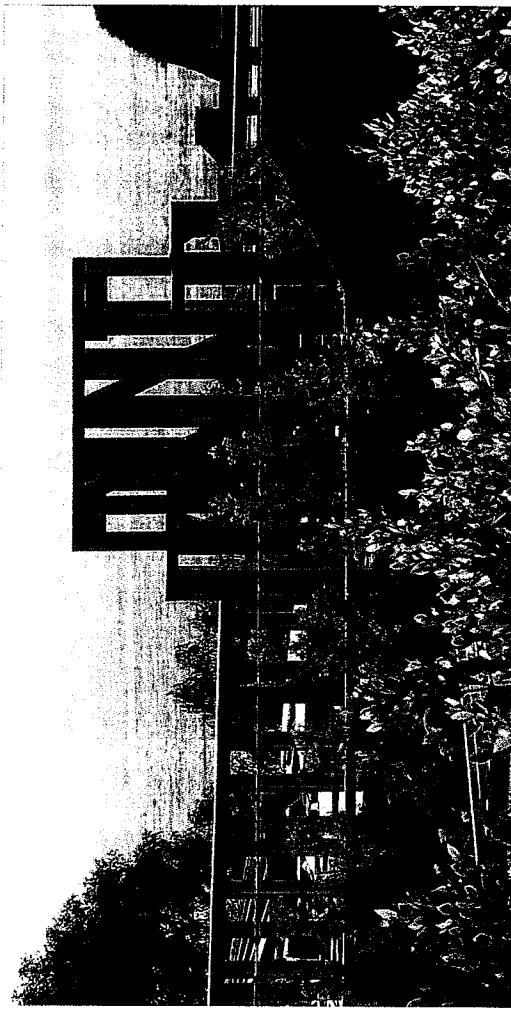
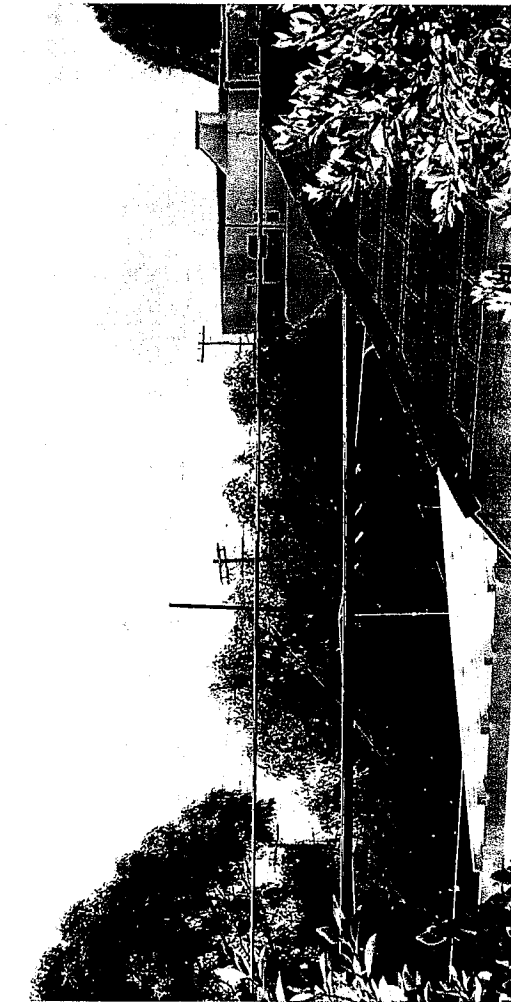
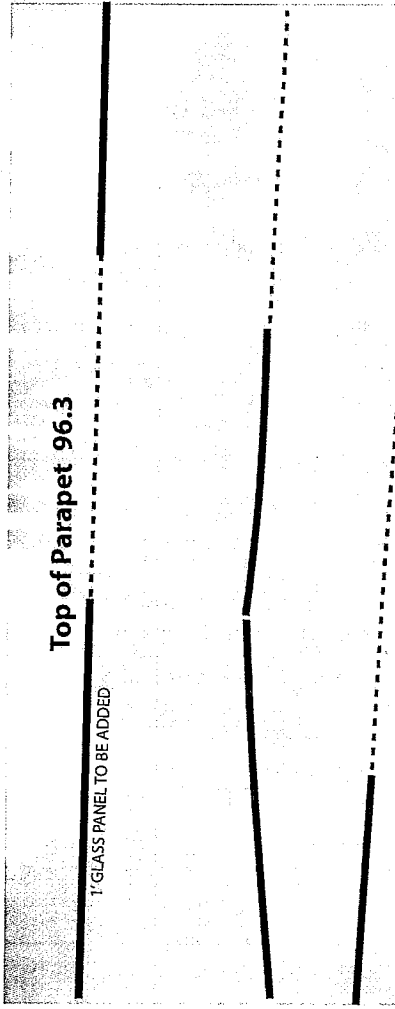


The story poles were false.

SHOWN TO THE COMMISSION (2011)

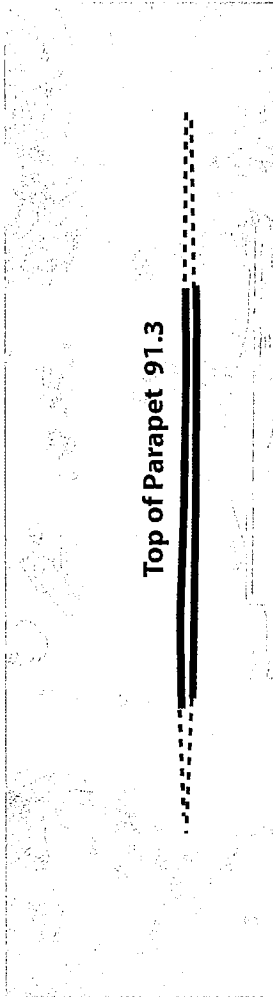


ACTUAL CONSTRUCTION (2013)

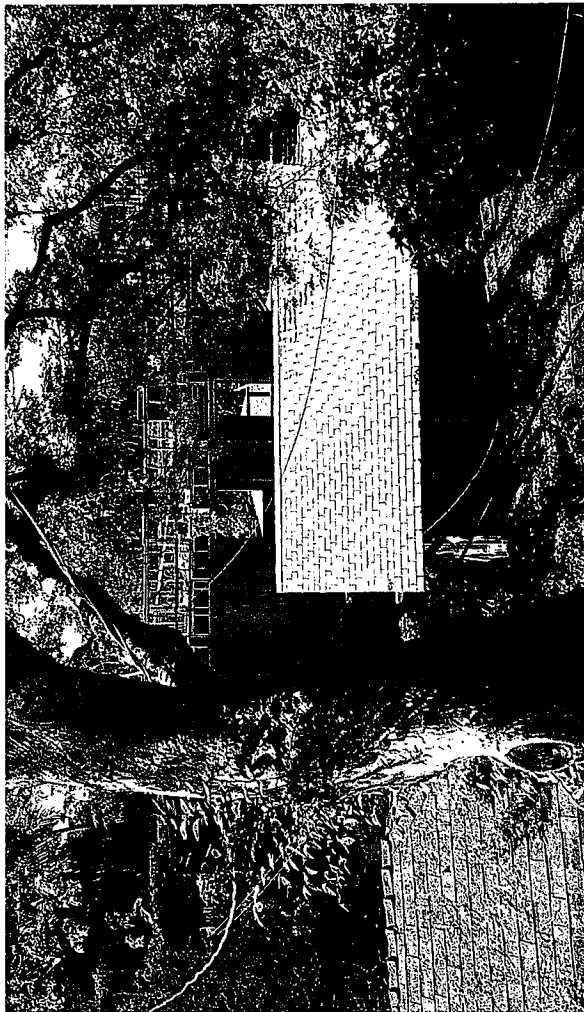
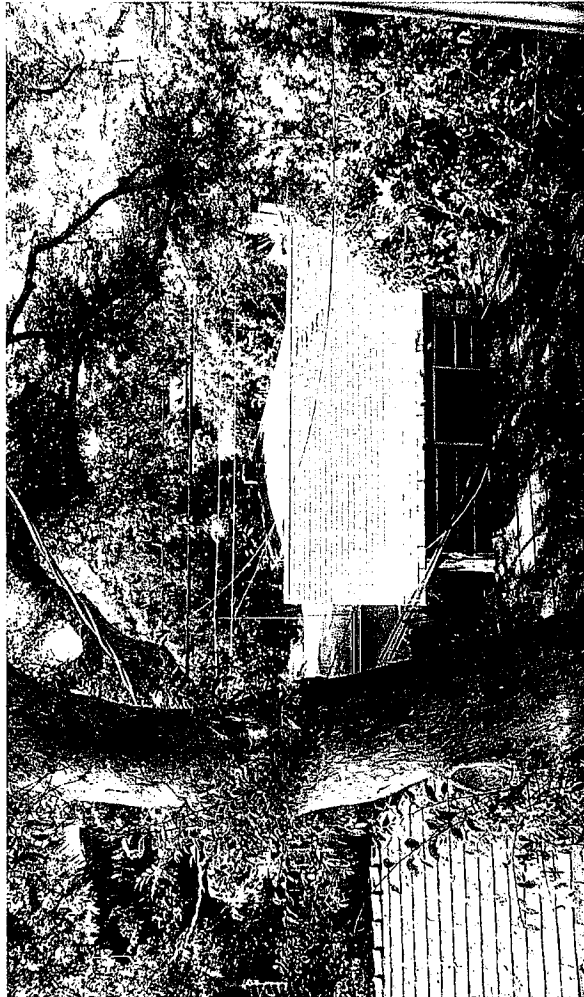
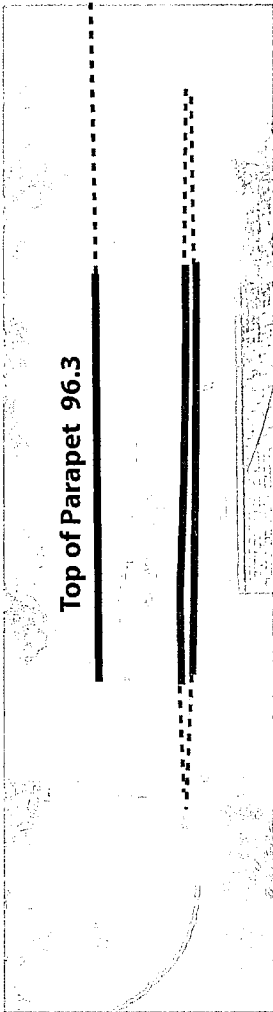


The story poles were false.

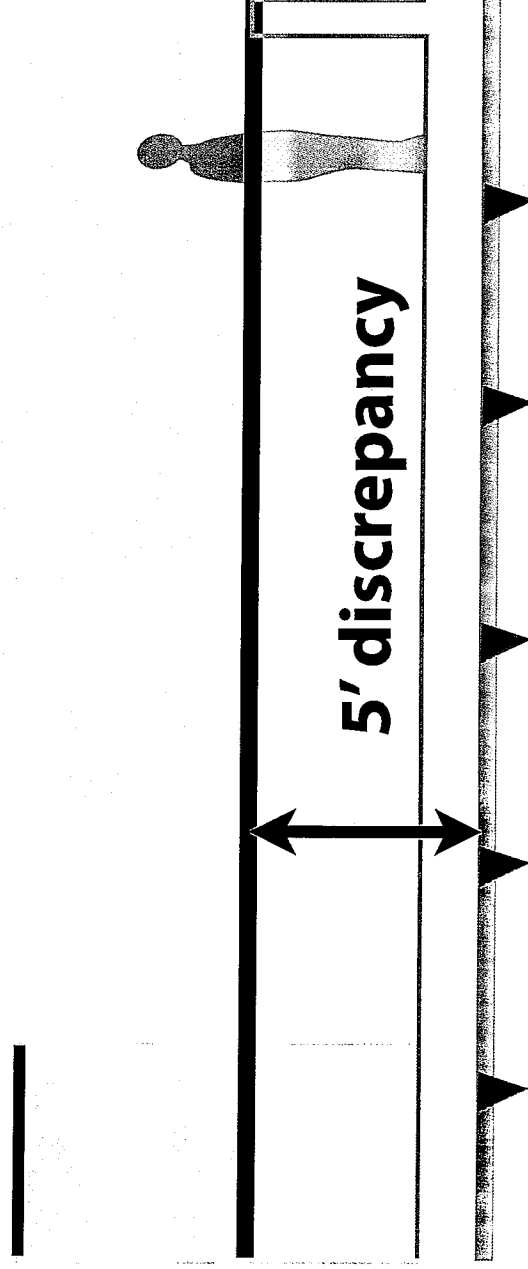
SHOWN TO THE COMMISSION (2011)



ACTUAL CONSTRUCTION (2013)

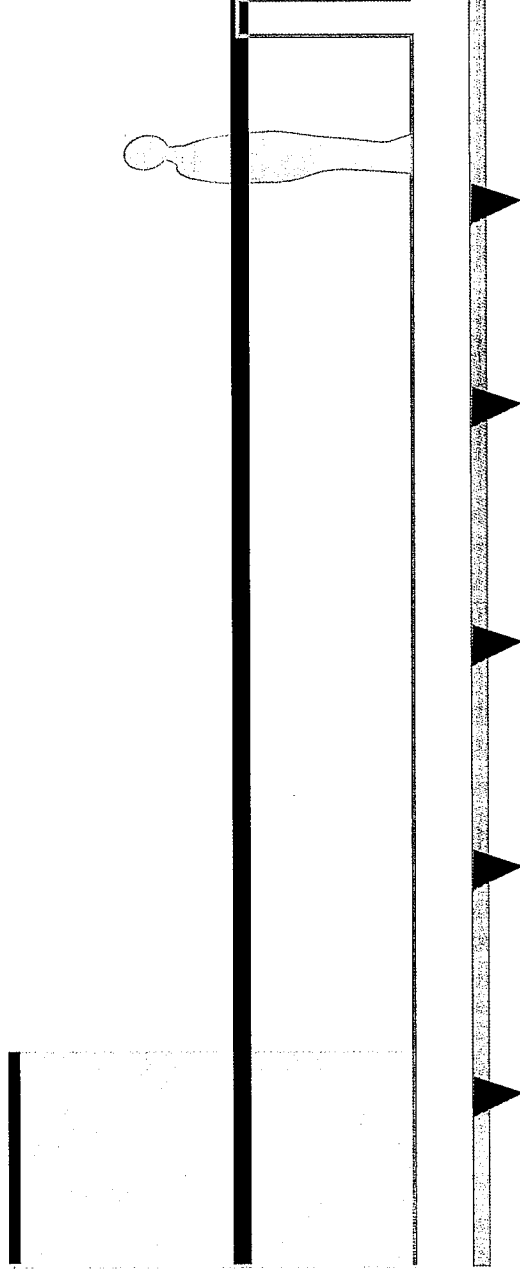


Conclusion:
Applicants have knowingly violated their
purported building height by 5'



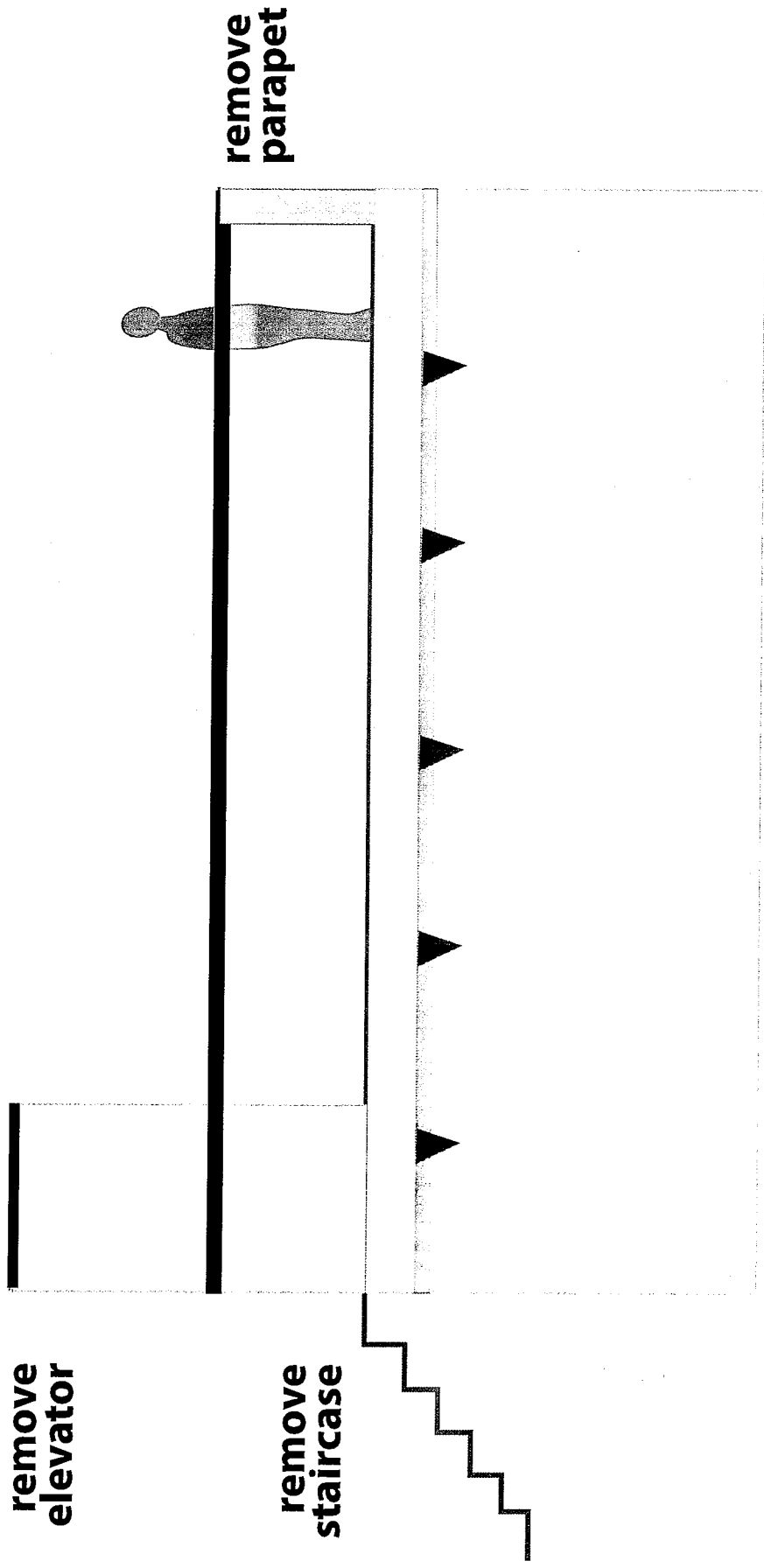
Remedy:

- 1. Revoke permit**
- 2. Condition new permit on height reduction of 5'**



Remedy Alternative:

Revoke permit and condition new permit on conversion of deck to roof (effective height reduction of 3.5')

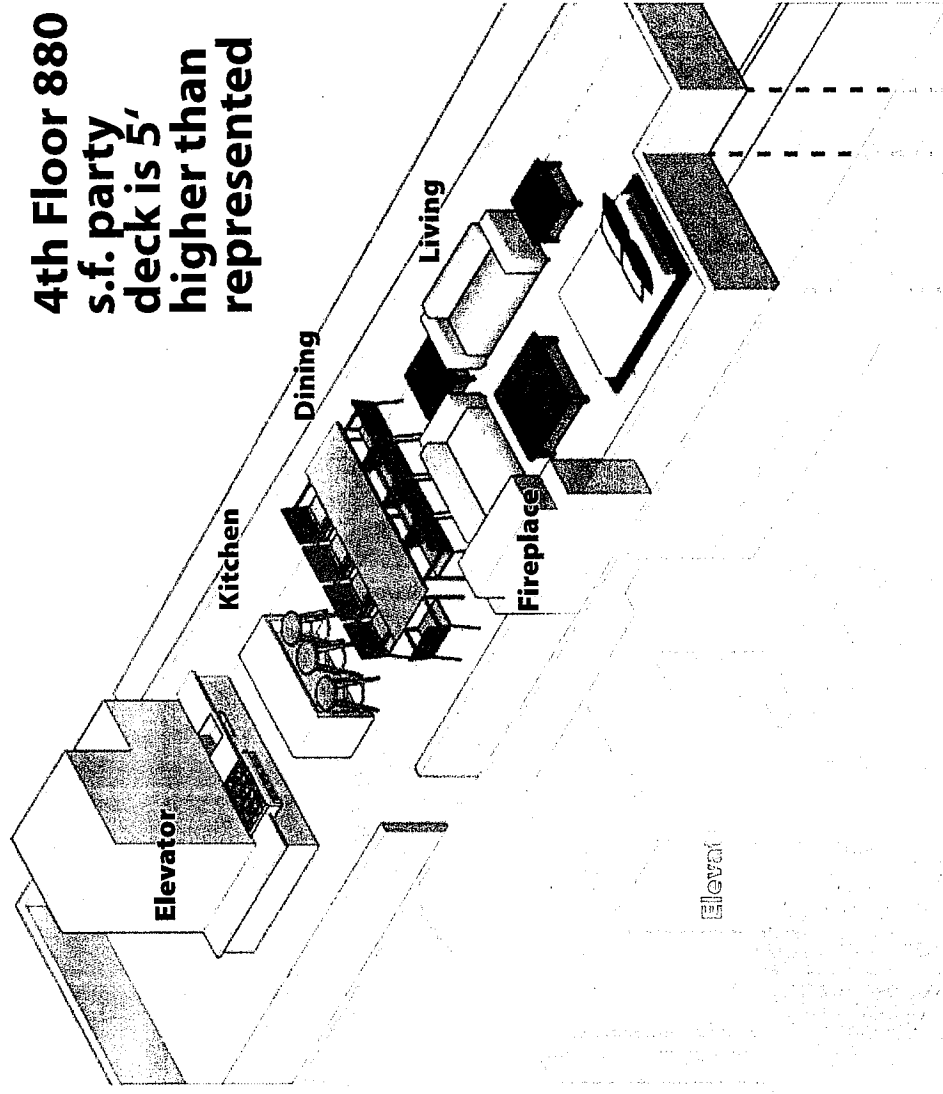


Claim of "small" roof deck:

"I did talk with the applicant, who said that he was planning on submitting a [revised] design...with a **small** roof deck."

- Coastal staff, Dec. 2011

**4th Floor 880
s.f. party
deck is 5'
higher than
represented**



**3rd Floor
living space**

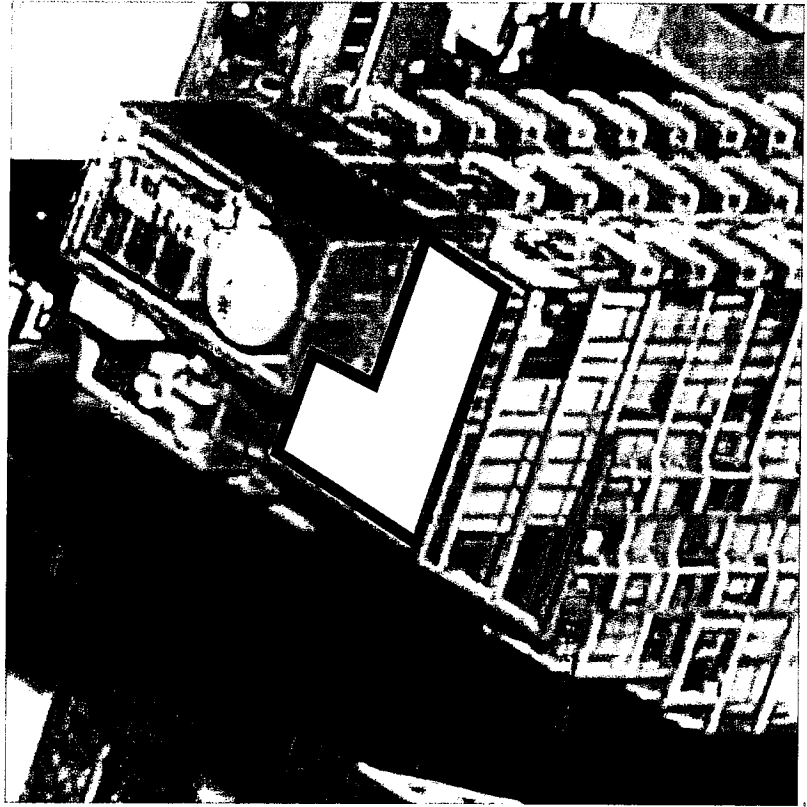
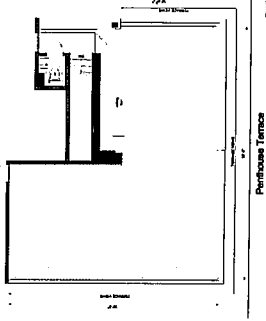
*Party deck furnishings
per applicants'
drawings submitted to
Coastal Commission*

Proposed

Claim of "small" roof deck:

Rivington Hotel
New York

880 s.f.
penthouse
party deck



**Claim of no impact:
...no public views
will be affected."**

- Fred Gaines, attorney for
applicant, in letter to
Commission

Actual view of party deck
from public staircase on
Amalfi Hill, providing
coastal access



**Claim of no impact:
...no public views
will be affected."**

- Fred Gaines, attorney for
applicant, in letter to
Commission

Simulation of prior view
from public staircase on
Amalfi Hill, providing
coastal access

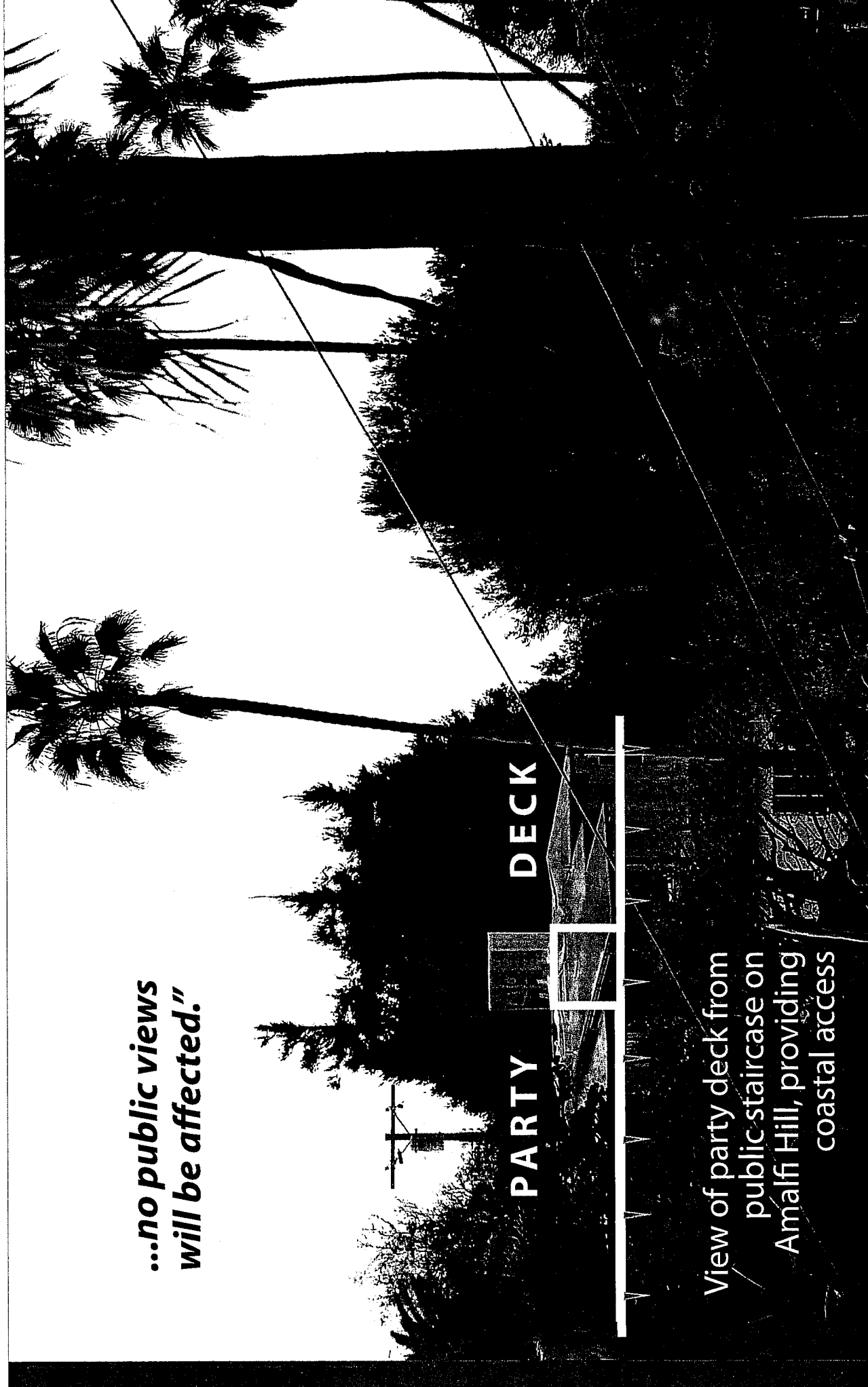


***...no public views
will be affected."***

PARTY

DECK

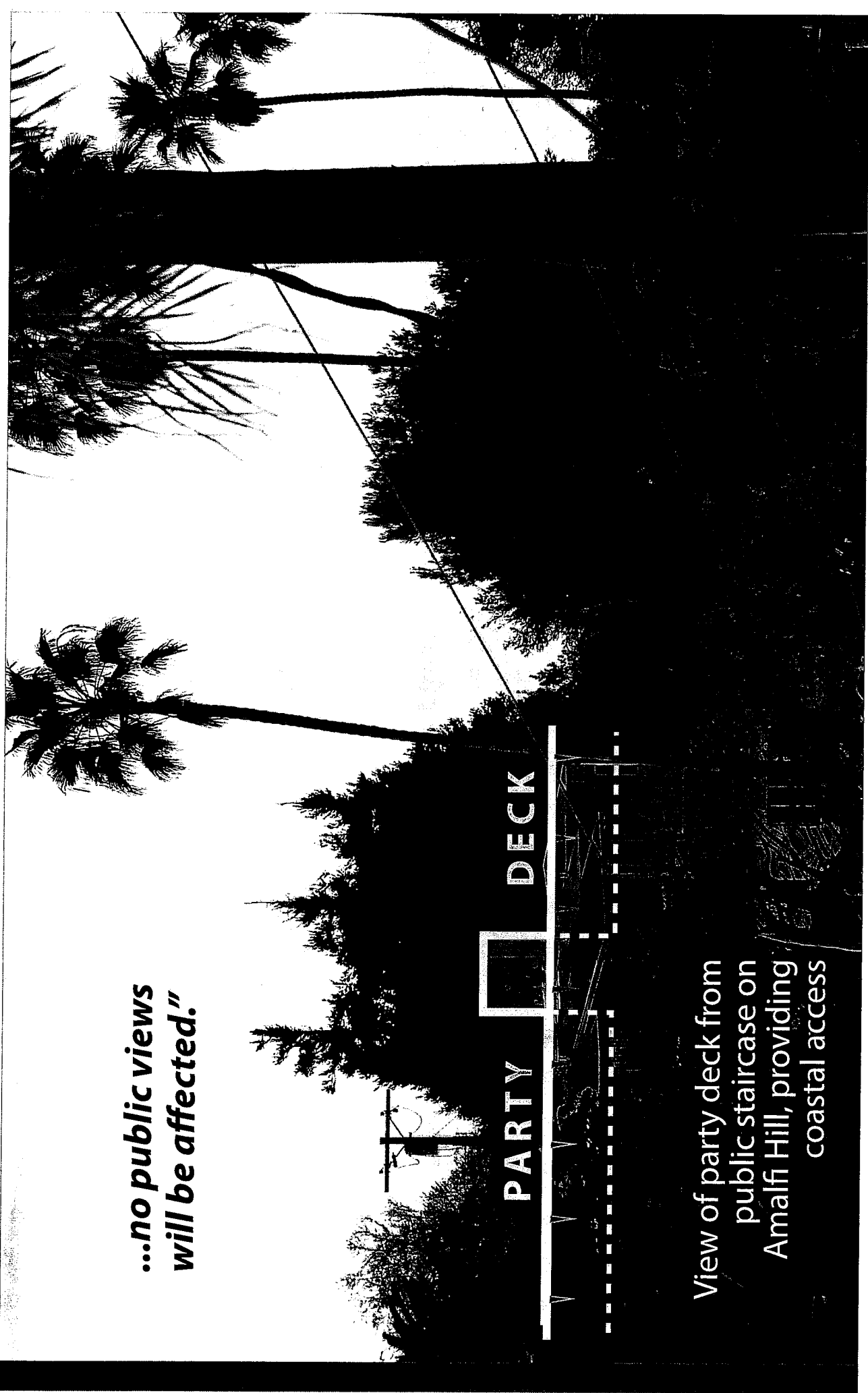
View of party deck from
public staircase on
Amalfi Hill, providing
coastal access



***...no public views
will be affected."***

PARTY DECK

View of party deck from
public staircase on
Amalfi Hill, providing
coastal access



Your action

Had the Commission been shown the true height, you would likely have imposed different conditions.

Please vote to revoke, with new conditions lowering the height.

Send a message that applicants cannot mislead the Coastal Commission or coastal communities.

Thank you

